

WOMEN'S RESERVATION BILL : RHETORIC OR REALITY

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The Constitution (One Hundred and Eighth Amendment) Bill, 2008, commonly known as Women's Reservation Bill (WRB) seeking to earmark 33 percent of seats for women in Lok Sabha and State assemblies was introduced by the UPA Government in the Rajya Sabha on May 6th, 2008. The Bill aims at eliminating gender inequality and discrimination against women by political empowerment of women, so as to fulfill people's mandate of women empowerment as envisaged in the National Common Minimum Program of the government. Women's Reservation Bill has seen many highs and lows ever since its first appearance in September, 1996¹. The Parliament of India has time and again witnessed ugly political stands and condemnable protests over the Women's Reservation Bill (WRB). Since its first appearance for seeking parliamentary approval in 1996, this reservation bill has undergone a roller coaster ride. Successive governments have placed it on the floor of the house, only to have it shelved². The bill is now firmly on the national political agenda and political parties know that sooner or later, something will have to be done. It is for this reason that proposals and counter proposals are being suggested by our political leaders to show that at least publicly they are not hostile to the bill. But the repeated debacle of the bill in Parliament has now made it plain that the chances of its passage through Parliament are remote. Individually, male MPs are apprehensive that it threatens to undercut their claims to their seats.

I. NEED FOR RESERVATION

Our Constitution guarantees equality before law and assures equal protection of laws to all citizens irrespective of their caste, creed, religion, place of birth and sex³. It not only embodies in it the concept of gender

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¹ Constitution (Eighty First Amendment) Bill, 1996.

² Constitution (Eighty Fourth Amendment) Bill, 1998.

³ Constitution of India 1950, Article 14: The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

parity but expressly forbids discrimination based on sex⁴. It specifically provides for equality of opportunity between men and women in public employment and prohibits discrimination in such employment based on gender⁵. While guaranteeing equality of status and opportunity to women, the Constitution also provides for affirmative action in their favour. Article 15 (3) & (4) empowers the state to enact special provisions for women and children and Scheduled Castes / Scheduled Tribes and other socially and educationally backward Classes⁶.

Various steps has been taken by the central as well as state governments to improve the status of women. At the National level, the policy an empowerment of women is a progressive measure⁷. At the international level, the series of world conferences on women have contributed to putting women's concern high on the global agenda. The full and equal participation of women in political, civil, economic, social and cultural life at the national, regional and international levels and the eradication of all forms of discrimination on the ground of sex are priority objectives of the international community⁸.

To improve the situation of women, central and state governments are taking several initiatives for over all development, empowerment and welfare of women. Many policy and programmes are passed by government in this

⁴ *Ibid.*, Article 15: (i) The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

⁵ *Ibid.*, Article 16: (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state.

(2) No citizen shall, on ground only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of any employment or office under the state.

⁶ *Ibid.*, Article 15: (3) Nothing in this article shall prevent the state from making any special provisions for women and children. (4) Nothing in this article or in clause (2) of article 29 shall prevent the state from making any special provisions for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

⁷ See, Government of India, NINTH FIVE YEAR PLAN (1997-2002) Vol. II, p. 321; Government of India, TENTH FIVE YEAR PLAN (2002-2007) Vol. II, pp. 238-255.

⁸ Convention on the Elimination of all forms of Discrimination against Women, 1979; Convention on the Political Rights of Women, 1952.

regard⁹. But women's rights and women's equality cannot be achieved unless women in large numbers are visible and active, politically, socially and economically. There is a need to involve more women at decision making levels. There is a need to empower women politically. And by "Political Empowerment" mean a political system favoring the participation in and control by women of the political decision making process and in governance. This is an essential factor in promoting and maintaining policies and measures for the fulfillment of the goal of Indian democracy and the Constitution.

If we look at the history of one country we find that women's contribution was immense at the time of freedom struggle and they played major role in national movement. But with the freedom of the country, women started losing their political control and decision making power which they immensely exercised during freedom struggle. Representation of women in both the houses of parliament never ever exceed 10% mark. Therefore, to increase women's participation at political level a demand to have reservation for women in both the houses is going on.

Despite education and capability, women are not being given tickets, hence the need for reservation. Parliament is a people's representative body, and people mean men and women. What Parliament, therefore, do we have at present with just 50% of the people represented ? Lack of money, muscle power and mafia have prevented party men from giving them the tickets. In such a scenario unless a few seats are kept reserved for women, it would be very difficult for them to come into mainstream politics in good number. In 1974, the Report of the Committee on Status of Women highlighted the low number of women in political bodies and recommended that seats be reserved for women in panchayats and municipal bodies¹⁰. Two dissenting members of the Committee supported reservation of seats in all legislative

⁹ NATIONAL POLICY FOR EMPOWERMENT OF WOMEN, 2001, Department of Women and Child Development, Ministry of Human Resource Development, Government of India.

¹⁰ TOWARDS EQUALITY: REPORT OF THE COMMITTEE ON THE STATUS OF WOMEN IN INDIA, Ministry of Education and Social Welfare, Department of Social Welfare, Government of India, 1974.

bodies¹¹. The National Perspective Plan for Women (1988) recommended a quota of 30% in panchayats, municipalities and political parties¹². The National Policy for Empowerment of Women (2001) stated that reservation shall be considered in higher legislative bodies¹³.

Constitution 73rd and 74th Amendments of 1992 inserting Articles 243D¹⁴ and 243T¹⁵ which introduced Panchayats and Municipalities in the Constitution provides that not less than one third of the seats shall be reserved for women in every Panchayat and Municipality. It also provide that from amongst the seats reserved for SC/ST, not less than one-third seats shall be reserved for women belonging to SC/ST. The said Articles also provide that such seats reserved for women may be allotted by rotation to different constituencies. The consequence of these amendments is that about a million of rural and urban women came out of their houses and shoulder the responsibility of local welfare and governance.

The Constitution provides for reservation of seats in Lok Sabha and State Legislative Assemblies for SC/ST in proportion of their number in the population¹⁶. The Constitution makes no provision for reserving seats for women in Parliament and the State Legislature. Reservation of seats for women in Parliament and the State Legislature, therefore, requires constitutional amendment that calls for two-third members voting for the legislation.

¹¹ The dissenting members were Lotika Sarkar and Vina Mazumdar.

¹² NATIONAL PERSPECTIVE PLAN FOR WOMEN – 1988-2000, Report of the Core Group set up by the Department of Women and Child Development, Ministry of Human Resource Development, Government of India. 1988

¹³ *Supra* n. 9.

¹⁴ Constitution of India 1950, Article 243D-(3) Not less than one third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.

¹⁵ *Ibid.*, Article 243T-(3) Not less than one third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.

¹⁶ Constitution of India, 1950, Articles 330 and 332.

II. HISTORICAL JOURNEY OF THE BILL

Having provided reservation for women in Panchayats and Municipalities, demand was made to provide reservation for women on the same lines in the House of People and in the legislative assemblies of the states. To fulfill this popular demand the bill was first introduced during H.D. Deve Gowda's tenure in 1996.¹⁷ It was shelved after BJP's Uma Bharti demanded a sub quota for OBCs in the draft legislation – a demand that has been articulated also by leaders like Mulayam Singh Yadav (SP), Lalu Prasad Yadav (RJD), Sharad Yadav (JD-U) and Ram Vilas Paswan (LJP). Some of them have even called for a sub quota for minorities. The 1996 Bill was examined by a Joint Committee of Parliament which recommended that seats be reserved for OBCs and also in Rajya Sabha and the State Legislative Councils. Since then, at least two serious attempts have been made to introduce the bill in Lok Sabha, with no success. NDA government during its tenure has introduced the bill in 1998 in the Lok Sabha but unfortunately it again seen the same drama.¹⁸ The measure has remained a mirage for some 12 years.

The fate of the bill has been the same every time it has been tabled for approval in Lok Sabha – walkouts, adjournments of the house, the bill being ditched and the whole process being sent back to point zero. It has been a common practice that the political parties swear of supporting the bill but as soon as it is introduced in the house, an ugly game is played out by self acclaimed radical politicians with their vigorous protests, making it impossible for the proceedings to continue. On public front, every political party for the last few years has been assuring its support to the bill, which disarms women activists, but when it comes to practical grounds, we happen to see only the antagonism in their approach.

Twelve years later, the United Progressive Alliance (UPA) government, going by its common minimum programme, introduced the WRB on May 6th, 2008 in Rajya Sabha, though amid dramatic protests from certain political parties. The bill has this time being introduced in the Rajya Sabha so as to become a permanent element of the proceedings. This time,

¹⁷ Constitution (Eighty First Amendment) Bill, 1996.

¹⁸ Constitution (Eighty Fourth Amendment) Bill, 1998.

Bhartiya Janta Party (BJP) and Left Front kept their words in supporting the bill. But a stern and condemnable protest was witnessed from Samajwadi Party's Mulayam Singh Yadav and Rastriya Janta Dal's Lalu Prasad Yadav. They felt that the bill would promote inequality in the society as it would accommodate the influential in the society and will not do any good to SC, ST and OBC women. They demanded separate reservation within reservation for the weaker sections of the society. The bill was referred to the Parliamentary Standing Committee of Law and Justice, headed by senior congress member of Parliament E.M. Sudarsana Natchiappan. The committee also has Brinda Karat of CPM, Najma Heptulla of BJP and Jayanti Natarajan of Congress as its members. In the standing committee the bill would be discussed in detail and members of different political parties could give their suggestions. Some MPs are personally threatened as they would lose their constituencies – centre of personal vested interest to women. Male MPs believe that introducing 33% reservation will, along with reservation for SC/STs, make 50% of seats unavailable to them. Which body of men will give up their seats to allow women to take over ? As one MP from the Telugu Desam said “ Why should we agree to sign our own death warrant.”

III. HIGHLIGHTS OF THE NEW BILL

Seen as corollary to the Panchayat Raj legislations that reserved one-third seats for women in local bodies the Women's Reservation Bill introduced in the Rajya Sabha by UPA government on May 6th, 2008 seek to reserve one-third, or 33 percent, seats for women in the Lok Sabha and state assemblies¹⁹. It also provides that one third of the total number of seats reserved for Scheduled Castes and Scheduled Tribes shall be reserved for women of those groups. Similar Bills have been introduced thrice before in 1996, 1998 and 1999 but lapsed with the dissolution of their respective Lok Sabhas²⁰. Hence this time the Bill was introduced in the Rajya Sabha as it would not lapse even at the end of the government's tenure.

¹⁹ Constitution (One Hundred and Eighth Amendment) Bill, 2008.

²⁰ Constitution (Eighty First Amendment) Bill, 1996; Constitution (Eighty Fourth Amendment) Bill, 1998.

The Bill aims at eliminating gender inequality and discrimination against women, by political empowerment of women, so as to fulfill people's mandate of Women Empowerment as envisaged in the National Common Minimum Programme of the government. The main highlights of the Bill are:

- (i) Reservation for women, as nearly as may be, one third seats of the present strength of the House of the People and Legislative Assembly of every state. The allocation of reserved seats shall be determined by such authority as prescribed by Parliament.
- (ii) As nearly as may be one-third reservation for women including one-third the number of seats reserved for the Scheduled Castes and the Scheduled Tribes in the House of the People and in the Legislative Assembly of every state to be reserved for women of that category.
- (iii) Reservation for women in respect of nominations of members of Anglo-Indian community in the House of the People and in the Legislative Assemblies of the States. Of the two seats in the Lok Sabha reserved for Anglo-Indians, one will be reserved for women in each of the two elections in a cycle of three elections.
- (iv) Reservation for women in the Legislative Assembly of the National Capital territory of Delhi.
- (v) Reserved seats may be allotted by rotation to different constituencies in the state or union territory. If a State or Union Territory has only one seat in the Lok Sabha, that seat shall be reserved for women in the 1st general election of every cycle of three elections. If there are two seats, each shall be reserved once in a cycle of three elections.
- (vi) Reservation of seats for women should cease to have effect on the expiration of a period of fifteen years from the enactment of the Bill.

To give effect to the above proposals, the Bill provides for :

- (a) Amendment of Articles 239AA, 331 and 333 and insertion of new articles 330A, 332A and 334A in the Constitution to provide for reservation for women in the House of the People and the Legislative Assemblies of the States; and
- (b) To make consequential changes in certain other related enactments.

The Constitution (One Hundred and Eighth Amendment) Bill, 2008, introduced in Rajya Sabha and pending therein, has been referred to the Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, headed by Dr. E.M. Sudarsana Natchiappan, Member, Rajya Sabha for examination and report.

A similar Bill was introduced in 1996, and examined by a Joint Committee on the Constitution (Eighty First Amendment) Bill, 1996 (Chairperson: Smt. Geeta Mukherjee). Whereas many of its recommendations have been included in the current Bill, recommendations on reservations for OBCs and in the upper Houses have not been included²¹.

Key recommendations of the Joint Committee on the 1996 Bill and provisions of the 2008 Bill

Key Recommendations of Joint Committee on the Constitution (81st Amendment) Bill, 1996	2008 Bill
Reservation should be extended to Rajya Sabha and the Legislative Councils.	No
The reservation should be extended in the first instance for 15 years then reviewed to decide whether it should be continued.	Yes (no provision for review)
Reservation should be provided for women from Other Backward Classes after the Constitution extends reservation to OBCs.	No
Reservation to be extended to women of the Anglo-Indian community.	Yes
Provision should be made to reserve seats in cases where a state has less than three seats in the Lok Sabha or less than three seats are reserved for SC/STs.	Yes
Legislative Assembly of Delhi should be included. (Reservation in Puducherry Assembly requires only an ordinary Act).	Yes
Substitute the words 'not less than one-third' with 'as nearly as may be, one-third'.	Yes

²¹ REPORT OF THE JOINT COMMITTEE ON THE CONSTITUTION (EIGHTY FIRST AMENDMENT) BILL, 1996. December 9, 1996.

The Bill in its original form was supported by feminists and women's activists. The proponents of the policy of reservation state that although equality of the sexes is enshrined in the Constitution, it is not the reality. Therefore, vigorous affirmative action is required to improve the condition of women. Also, there is evidence that political reservation has increased redistribution of resources in favour of the groups which benefit from reservation. A study about the effect of reservation for women in panchayats shows that women elected under the reservation policy invest more in the public goods closely linked to women's concerns. A 2008 study, commissioned by the Ministry of Panchayati Raj, reveals that a sizeable proportion of women representatives perceive an enhancement in their self-esteem, confidence and decision-making ability²². Some opponents argue that separate constituencies for women would not only narrow their outlook but lead to perpetuation of unequal status because they would be seen as not competing on merit.

IV. OBJECTIONS TO THE BILL

Lets examine the tenability of the main objections raised and flaws pointed out in the Bill by its critics:

1. The Bill is discriminatory, arbitrary, undemocratic and unconstitutional. It is undemocratic as reservation of one-third of the seats for women in Parliament restricts the choice of voters in the reserved constituencies. This is yet another attempt by radical feminists to use their gender for furthering their own political interests, at the cost of the nation and ironically, other women. In a democratic set up there is no scope for reservation for women.

As far as the constitutionality of the Bill is concerned, there is affirmative, substantial and specific constitutional mandate²³ for positive discrimination on the ground of sex for the benefit of women. Because of this constitutional protection, reservation for women cannot be challenged as violative of the Constitution. The insertion of clause (3) of Article 15 in relation to women is by way of recognition of the fact

²² STUDY ON ELECTED WOMEN REPRESENTATIVES IN PANCHAYATI RAJ INSTITUTIONS, Ministry of Panchayati Raj, Government of India, April, 2008.

²³ Constitution of India 1950, Article 15 (3).

that for centuries women of this country have been socially and economically handicapped. As a result, they are unable to participate in the socio-economic activities of the nation on a footing of equality. It is in order to eliminate this socio-economic backwardness of women and to empower them in a manner that would bring about effective equality between men and women that Article 15 (3) has been placed within Article 15. Its object is to strengthen and improve the status of women²⁴. It is because of this constitutional protection that reservation for women in Lok Sabha and state assemblies cannot be challenged as violative of the Constitution.

2. Reservation will result in proxy control. Reservation would result in politicians fielding their wives, daughters, sisters and daughter-in-laws as candidates for the reserved seats and use them as their agents of proxy control.

If we take a long term view, we can say that this initial proxy control will give to actual exercise of power by women in future.

3. Reservation within Reservation – Demand for OBC and minority women quota – Reservation for OBC women has been a long standing demand in the Parliament. Since the WRB accepts the reservation of SC/ST women within the 33% set aside, it must also accept a cut off % for OBC women. On the same premise demand for a quota for women from the minority community was also made.

This demand by some of our politicians as a virtual precondition to reservation for women in general seems to be incorrect. Unlike for SCs and STs, there is no constitutional reservation for OBCs in Lok Sabha and legislative assemblies. Concern for Backward classes is just one more excuse to stall the Bill yet again. It is just an attempt to stall the passing of the Bill. Feminists have been asking for women reservation across class, caste and community as they do not want to divide Indian womanhood into these compartments. The discrimination is not between different groups of women but between men and women since very few women are given party tickets to contest election.

²⁴ GENDER JUST LAWS BULLETIN, No. 4 Dec, 1988, p. 10.

4. It has been pleaded that the bill is seriously flawed in so far as the rotational reservation of one third seats is concerned. The bill provides for rotation of reserved seats. The rotational system will mean every time a new set of constituencies will be declared as reserved for women. It is argued that rotation may not be as harmful at the local level as it would be at the state and national level. The pre-election nursing of a Lok Sabha or assembly constituency is a very demanding task that involves a very heavy investment on the part of the political parties and more so on part of individual aspirant. Rotational reservation of one-third exclusively for women would lead to a grave uncertainty for sitting MPs eroding their meticulously developed political base and leaving them no scope to pursue politics as a life-long mission. Rotation of reserved seats may reduce the incentive for an MP to work for his constituency as he could be ineligible to seek re-election from that constituency²⁵.

However, supporters of WRB insisted that MPs need not treat their constituency as their own private property and that nobody is indispensable. Every constituency turn by turn (i.e. by rotation) must get the chance to have a woman legislator representing it. There seems to be no flaw in rotational reservation.

V. PROPOSALS AND COUNTER PROPOSALS

Though left parties support the Bill in its original form reserving a third of the existing number of seats, none of the other parties is supporting it. Government tried to build consensus on the Bill. A number of proposals and counter proposals at different time by different persons have been suggested. We must give serious consideration and thread bare discussion to them.

In July 2003, the then Lok Sabha speaker Manohar Joshi called a four party meet to arrive at a consensus on reservation Bill. Congress Deputy leader in the Lok Sabha Shivraj Patil suggested introduction of double-member constituencies in one-third of all parliamentary seats. Basically this means that 182 seats in parliament will be represented by two MPs, one

²⁵ Madha Nanivadekar, *Dual. Member Constituencies : Resolving Deadlock on Women's Reservation*, ECONOMIC & POLITICAL WEEKLY, October 25, 2003.

of which has to be woman. This principle will work by rotation with one-third seats being changed after each general election. This proposal requires increasing the number of parliament seats by $1/3^{\text{rd}}$ of its present strength. Initially, India had multi-member constituencies which included an SC/ST member. A 1961 Act converted all constituencies into single member constituencies²⁶. The advantages of having dual-member constituencies are that it does not decrease the democratic choice for voters, does not discriminate against male candidates and make it easier for members to nurture constituencies. However, its disadvantages are that the sitting members may have to share their political base and women member may become secondary person.

This proposal appeared somewhat acceptable at the four party meeting. However, later Congress and Left parties appear unwilling to support the dual-member constituencies on the ground that it would dilute the cause.

Women activists are aghast at this suggestion. They see it as one more dilatory tactic to stall the bill²⁷. They claim that "if there has to be double member reservation, then all seats should be made double member". Problem is how to elect two candidates from one seat. Whether single vote will be counted for both the candidates.

The Election Commission has also put up a proposal to make it mandatory for political parties to nominate 33% women candidates with a state as a unit for the Lok Sabha and the district as a unit for the state assemblies. This would mean that in a state where there are 40 Lok Sabha seats, the party would have to nominate at least 13 women candidates, and in the state assembly elections, it would have to nominate one-third women candidates at the district level. The Election Commission's suggestion has the advantage that it does not bear the quota tag. Nor will they be faced with the problem of rotation of constituencies.

Politicians, however, are not very receptive to the EC's suggestion either. The Shiv Sena is opposed to it and Mulayam Singh Yadav is not willing to concede more than 20% seats for women. This proposal for its

²⁶ The Two – Member Constituencies (Abolition) Act, 1961.

²⁷ Brinda Karat, *Alternative as Dilution*, OUTLOOK, May 17, 2003.

proper functioning require reservation of women in political party organizations from grass root level enrolment of party members right up to the national executives and parliamentary boards and parliamentary committees. Even then there is a possibility that party may allot tickets to women from those constituencies where it is having very little chance to win thereby denying them the chance to be present in the Parliament. There is no guarantee that a significant number of women would get elected. However, its advantages are:

Provide more democratic choice to voters

Allow more flexibility to parties to choose candidates and constituencies depending on local political and social factors

Can nominate women from minority communities in areas where this will be an electoral advantage

Allow flexibility in the number of women in Parliament

VI. OPTIONS AVAILABLE

In August, 2005 Prime Minister Man Mohan Singh had held a meeting with leaders of NDA and other parties in which three proposals relating to Bill were discussed. First was to introduce the lapsed Bill providing one-third reservation for women. Second was to increase the strength of legislature to provide one third of the original number of seats to women. Third was to implement the proposal of Election commission of India making it mandatory for the recognized political parties to ensure putting of minimum agreed percentage of women in state assemblies and parliamentary election so as to allow them retain the recognition with EC as political party. However, no consensus was arrived at.

VII. CONCLUSION

Women represent 50% of the population, contribute to 2/3rd of the working hours and earn 1/10th of the world's income. This bill is not a bounty but an honest recognition of their contribution to nation building. We need to set a deadline on consensus building measures else we would end up with the annual feature of having more and more new proposals every year demanding an altogether new debate starting afresh in the new light, thus stalling the passage of the Bill forever.

As far as the women representation in the panchayati raj institutions and local bodies are concerned, in a very short period of time, elected women have played such a positive role that they now occupy more than 40 percent of the total seats in many states. Women's movements have always supported the cause of social justice and also reservations being extended to the OBC's in jobs and educational institutions while SC/ST rights are continued. It is unfortunate that leaders like Mulayam Singh Yadav and Lalu Prasad Yadav who are symbols of the struggle for social justice do not favour including women of all castes and communities within its beneficiary.

Let us hope that our parliamentarians allow the bill to be debated and decided upon in the Parliament and women's rights and their right to representation will be supported by all sections of the House and that the bill be passed. The onus is now on the parliamentarians to come out with the verdict in favor of this long awaited bill, which would work in the process of women empowerment.