

WOMEN RESERVATION BILL: NEED TO RE-CONSIDER THE FORGOTTEN 108TH CONSTITUTION AMENDMENT BILL

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“If India is to lead the world, if India has to compete with countries like America and China and become an advanced nation, women’s empowerment is the only answer.”

Navin Patnaik, Orissa Chief Minister

Orissa Assembly recently passed a unanimous resolution to provide for 33% reservation for women in Legislative Assembly and Parliament.ⁱ This progressive move was praised across all corners of the world. United Nation entity for Gender equality and Empowerment of Women sent a personal letter congratulating the Orissa CM for this feat.ⁱⁱ The state’s CM went forward and announced on 10th March 2018⁹ that 33% of party seats (BJD) in upcoming Lok Sabha election will be reserved for women meaning thereby that every third candidate for the next election from his party is going to be a women.ⁱⁱⁱ The discussion of such recent trends and the passing of 124th Constitution Amendment Bill stir a debate over the reconsideration of 108th Constitution amendment Bill (commonly known as Women Reservation Bill). In this article we shall see why the reconsideration of Bill affecting almost 50% of Indian population needs the foremost consideration.

The 124th Constitution Amendment Bill was introduced on 8th January, 2019 and was passed in the Lok Sabha and Rajya Sabha within a span of two days. The passage of constitution amendment at such a pace is both remarkable and unprecedented in Indian history. The bill converted into the 103rd Constitutional amendment. The bill seeks to reserve the 10% seats for economically weaker section (EWS) of general category. It aims to achieve the principle of equality (Art 14) by treating the “unequals” unequally. The 103rd constitution amendment poses a question that if a reservation bill can be passed at such a pace why is then the Women reservation bill pending for such a long period of time? The reservation for women in the

Parliament and the State Legislatures is a demand that is made since the 73rd and 74th Constitutional Amendment (reserving 1/3 seats in Panchayats and municipalities). The constitutional amendment Bill for women reservation was introduced in 1996, 1998 and 1999. All these Bills lapsed with the dissolution of their respective Lok Sabha. The Constitution (One Hundred and Eighth Amendment) Bill 2008, introduced in Rajya Sabha and passed, also met with the same fate with the dissolution of 2014 Lok Sabha. The bill sought to amend the Article 239AA & 331, and insert new Articles i.e. 330A, & 332A in the Constitution. Broadly proposing the following measures:

- The Constitution (One Hundred and Eighth Amendment) Bill, 2008 seeks to reserve one-third of all seats for women in the Lok Sabha and the state legislative assemblies. The allocation of reserved seats shall be determined by such authority as prescribed by Parliament.
- One third of the total number of seats reserved for Scheduled Castes (SCs) and Scheduled Tribes (STs) shall be reserved for women of those groups in the Lok Sabha and the legislative assemblies.
- Reserved seats may be allotted by rotation to different constituencies in the state or Union territory.
- Reservation of seats for women shall cease to exist 15 years after the commencement of this Amendment Act.^{iv}

Equal representation in power is a fundamental precondition to truly effective and accountable democracy - Martin Chungong, IPU Secretary.

The sorry state of women in India's executive government and Parliament is highlighted by India's ranking of 148 in *Inter-Parliamentary Union (IPU) and UN Women report 2017*.^v The women make up only 11.8 % of the total 542 seats in Lok Sabha (64 MPs) and 11% in Rajya Sabha (27 MPs). The European countries stand at 22.5%, America at 25% and Nordic countries at 43.5%. Of the 8 SAARC nations, India ranks ignominious at 5th falling behind Nepal, Afghanistan, Pakistan and Bangladesh. The look among BRICS nation won't provide you with any solace either as it stands at 4th. The National Perspective Plan for Women (1988-2000) spoke of 30% reservation for women in decision-making bodies, including the panchayats at all levels. This showed a gradual acceptance that we needed to move from the token nomination

or co-option of one or two women in Panchayats as recommended by two committees - the B R Mehta Committee (1957) and Ashok Mehta Committee (1978) - to include "a critical mass" which was pegged at 30% at that time.^{vi}

Reservation in India was introduced as an exception to the Fundamental right to equality granted by our constitution. This reservation policy was originally introduced for Scheduled castes (SCs) and Scheduled tribes (STs) who suffered deep and entrenched social prejudice against them and were physically detached from the mainstream society. The constitution also empowered the state to make special provisions for other "socially and educationally backward" classes. This reservation was later extended for Other Backward classes (OBCs) by 93rd Constitution Amendment. The 103rd Constitution has finally extended this reservation to the EWS category granting 10% reservation to all the candidates belonging to Economically Weaker Section irrespective of their caste.

Reservations are meant to ensure that the ideal of "equal opportunity" is not a mirage for persons subordinated by social structures such as caste, gender, race, etc.^{vii} There can be no two opinions that women have been witness to such social subjugation over a long period of time and continue to be so till date in myriad ways. India was one of the very few countries which granted right to vote to women (earlier than some west "progressive" nations). However did a step to bring women in political mainstream by the instrument of "right to vote" has been successful? The statistics discussed above speak negative. The recent constitutional amendment has given a new perspective to the "concept of equality". Equality, until now was based on caste denomination. As Mandal Commission (in addition to our Constituent Assembly) pointed out that the caste was the ideal factor to judge the social subjugation of people. Since people belonging to particular caste were more backward than people belonging to other castes. Community identification became a norm for granting reservation. With 103rd amendment this norm was broken and reservation is granted based on individual basis. Equality, without contention, is the basic structure of our constitution.^{viii} But equality cannot be restricted to any one field, it needs to be given an overall character, and by that it means it should be social, economic, cultural and political equality. The seven decades of male domination in the highest law making bodies at centre and state has caused the voices of women to be unheard. With this changing nature of equality it is imperative to consider the equality of genders as well.

The fact cannot be disregarded that the law making bodies has come up with plethora of women welfare legislations. However the disturbing or rather concerning fact is that most of such legislations are the product of nationwide outrage against some of the heinous crime incidents. The 2013 criminal reform were the result of the unfortunate 2012 Nirbhaya incident. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was the consequence of the Vishakha incident and was able to see the light of the day after 16 long years since the Supreme Court guidelines in Vishakaha & Ors v State of Rajasthan & Ors,^{ix} or enactment of Dowry Prohibition Act 1961 and introduction of s.498A and s.304B in IPC in the backdrop of large number of violence, harassment and deaths of women in dowry demand cases. Most recently the Muslim women (protection of rights on marriage) bill, 2018 is one such example where law was the consequence of instant Triple Talaq incidents. The legislature appears to have adapted the practice of “crime before law” attitude. On the one side it may be true that legislature cannot foresee every form of crime against women, but it cannot be disregarded that legislature has failed to foresee even the basic of such necessities. The lack of women representation in the law making bodies is one of the factors responsible for such “ignorance” and “lack of sensitivity” (if I may use such terms) of the legislature. In the Constituent Assembly while discussing the reservation for SCs/STs in Legislature it was said that people belonging to SCs/STs are better placed to feel the pain of the community. it may be said that so is the case with women as well.

The women reservation bill has faced a wide criticism since its inception back in 90s. However many of the irregularities were removed in 108th Bill, there are still some glaring arguments against it. The four major contentions against the proposed amendment presented are – that it is against the interests of the backward classes (OBCs), Dalits and Muslims. PRASENJIT BOSE (2010)^x explains how such arguments are unfounded. Gender discrimination and oppression cut across caste, community and class identities. To suggest that the principle of positive discrimination in favour of women is acceptable for everybody else but not for one's own caste or community is neither logically tenable nor ethically sustainable. However the stand of Muslims holds the valid ground for their representation in Legislature is necessary to preserve the secular character of this nation (See Sachar Commission recommendations). Bose suggests that this cannot be the sole ground for its rejection. The women cut across religion and there are going to be some Muslim women coming to Parliament (if not in substantial number). However some representation is always better than no representation. Other such

arguments may also be raised, and are raised that women reservation are going to influence the male candidates commitment toward his constituency because there is always a threat of it being reserved in the next rotation thus denying him to contest from there losing his vote base. However one such alternative to resolve this fault was recommended by Medha Nanvidekar when she discussed how a “dual member constituency” can resolve the deadlock on women’s reservation.^{xi} There are other procedural oppositions raised against the reservation Bill (like ideal rotational policy, ensuring representation of women from backward classes), but they can only be resolved once the bill comes before the Parliament and the concerned committees to devise a common path. The opposition against the bill is much more than just procedure lacunas.

The UPA’s chief wrote a letter on 16th July, 2018 ahead of the last monsoon session of the Parliament offering their full unconditional support to the Bill. Other parties like AIAMDK, DMK, NCP and Left have also come forwards in support of this Bill. There appears to be no point in singling out the "Yadav troika" or the "social justice lobby" for opposing this legislation. The male parliamentarians, cutting across party lines- who have held the majority of the seats in the Parliament (approx 90%) – have been providing covert, and sometimes avert support to the Bill’s opponents. In essence, the opposition is from all those who want to preserve the status quo. Therefore, the real roadblock before the bill is patriarchal ideology and not individual parties or leaders. It is important to underscore this point before we can look closer at the merits/procedural aspects of the bill.

CONCLUSION

In lieu of my conclusion, it ears mentioning that the constitutional validity of the recent amendment is still to be tested on the anvil of basic structure doctrine. However the contention in favour of its validity is stronger and if its validity is upheld there is no reason why the 108th Constitution Amendment Bill should not be considered (in its old or new form)? The recent amendment has made it more obvious to ask this question that if an amendment can be passed at such a pace considering its importance (upliftment of the economic weaker section of the society) then why there has been no initiative from the side of the government to introduce the women reservation bill which is, if not more, equally necessary for our democratic structure?

Countries like Rwanda is having 30% reservation policy which makes it total women representation stand at roughly 64% highest among all. Our neighbours Nepal and Afghanistan

have 29% and 28% reservation policy respectively. So women reservation seems to be a tried and tested tool to increase women participation in legislative bodies. The implementation of this policy involves many procedural barriers.

We can, for instance, start with re-introduction of delimitation committee which used to distribute Lok Sabha seats among the states. The practice was discontinued with 543 seats fixed as per 1971 census. This was done in the light of population explosion in a country and industrialization. From 1976 to 2000 India witnessed significant changes in its demographic form and political nature. Population greatly increased in all states, migration happened to metropolitans but our constituency structured remained same. Now it is proposed to be changed in 2026. The committee can be used to restructure the distribution of seats and implement a rotational policy effectively without jeopardizing the current electoral mechanism of our country.

We can hope that the bill is considered before the end of this 16th Lok Sabha, however it seems unlikely. The Bill serves the interest of 50% of Indian population i.e. female and there is no reason to delay it more, especially when we have already seen what desire of a government can achieve in a span of two days and the necessary character of it. Women who hold up half the sky are short shrifted in a male-dominated world. We need to give them their proper share of this sky. We hope that the new bill will achieve this objective.

To all the little girls who are watching, never doubt that you are valuable and powerful and deserving of every chance and opportunity in this world to pursue and achieve your own dreams.- Hillary Clinton

ⁱ Prafulla Das, Odisha House passes 33% reservation for women, The Hindu, (Bhubhaneshwar 21st Nov 2018)

ⁱⁱ "We are pleased that the Government of Odisha has showcased leadership by proposing 33 per cent reservation for women in Parliament and the Assemblies," Deputy Country Representative of UN Women, Nishtha Satyam said in a letter to Patnaik

ⁱⁱⁱ Jitendra Singh, Naveen Patnaik's announces 33% quota for women in Lok Sabha: The women quota issue, explained, *TimesNowNews.com*, (India 12th March, 2019)

^{iv} The Constitution (One Hundred and Eighth Amendment) Bill 2008

^v Doel Sengupta, "India ranks 148 in representation of women in government", *Indian Express*, (Tamil Nadu 17th March 2017)

^{vi} Nirmala Buch, *Economic and Political Weekly*, Vol. 44, No. 40 (OCTOBER 3-9, 2009), pp. 8-10

^{vii} *State of Kerala & Ors v N.M. Thomas*, AIR 1976 SC 490

^{viii} Keshvanand Bharati v State of Kerala, (1973) 4 SCC 225

^{ix} (1996) 6 SCC 241

^x Prasenjit Bose, Economic and Political Weekly, Vol. 45, No. 14 (APRIL 3-9, 2010), pp. 10-12

^{xi} Medha Nanvidekar, Economic and Political Weekly, Vol. 38, No. 43 (Oct. 25-31, 2003), pp. 4506-4510

