ABSTRACT

Women, who constitute 50% of the population in the world, are not given equal opportunities in ruling the world. Parliaments of almost all the nations in the world have under representation of women. India, where patriarchy is in the roots is not an exception to it. Indian Parliament has come up with the Women Reservation Bill, to give equal opportunities to women in 1996 but till today it has not seen the light of the day. In various countries reservation has been granted to the women, but still it has not empowered women. Reservation only increases quantity and not quality. The supporters of reservation gives various reasons, like it will kick start women’s participation and also it has been successful till certain extent on the grass root level in India and other countries, though it has various drawbacks. The reservation policy’s success has also favored men only. The reservation policy has made women dummies in the hands of men. Reservation is doing nothing except demeaning women and giving men more authority and power. Reservation is not an end in itself; there are various other strategies that can be followed. In this paper we have thrown light on what women’s reservation Bill is, how the supporters and adversaries are arguing over it and how internationally this has been successful.

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INTRODUCTION

The reservation of Women in the legislature is the most debated issue in the present scenario. The bill for the reservation of women had been introduced in the year 1996 and till date that bill has not been able to take the form of law. Rajya Sabha has passed the bill in 2010 that too after great languish. Lok Sabha is still holding the bill. The reason which many great scholars give for not getting the bill passed is the patriarchal nature of the Indian Society as well as low female literacy rates. The reservation bill ensures 33% of reservation to the women in both central as well as state legislatures. Also, the bill proposes that there will be reservation within reservation because the SC, ST and rural women also need representation in the legislature.\(^2\) The main reason is under representation of women in Politics. This can be increased through more and more participation, which is possible either through various policies or through reservation. In India the policies which are being used, are increasing participation of women at a slow pace. So, the reservation will give power to the women and kick start their participation in politics. There is a sociological concept of ‘Critical Mass Theory’ which talks about how giving a kick start to women is imperative and how it will bring positive results in the legislation as they are more concerned about issues related to healthcare, Poverty, education, gender equality, childcare, violence against women etc. Women in politics are a minority and as a result they are forced to follow the patriarchal norms or so to say they are not able to impact the society in a more assertive manner. However, when the ratio will be large they will have a rationalized impact on political planning, policy and cultures. The Critical Mass Theory has been followed in various countries like Rwanda, Tanzania they have 30% and 20% of the seats reserved.\(^3\) But this theory has failed to a great extent. In India we see that at this moment we have two options either to gradually increase the participation of women in the legislature or to give them reservation. But if we consider the situation in case of India, we can see that the reservation policy of women seats at local councils and Panchayat level has led women no more than a token. If we go back to history, one thing we realize is that women politicians both who were at the centre and state level have lot of achievements. To name a few, Indira Gandhi, Jayalalitha, Mayawati, Sushma Swaraj have been very capable. Also, women empowerment cannot just happen through reservation.

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\(^2\) Sangeeta Barooah Pisharoty, ‘Twenty Years Too Long: Women’s Reservation Bill Continues to Languish in Lok Sabha’ The Wire (India, 16 September 2016).

Women need to be strong and articulate to face distinctive perspectives of men. They need to be highly motivated for influencing the policy process, legislative votes, and parliamentary activities behind the scenes. Mere qualitative or quantitative change in the women representation won’t make any difference. The qualitative change will be possible only if women have values and perspectives different from than that of men and they are ready to confront the same and then only quantitatively it will be helpful. So, I personally believe reservation should not be given to the women in the parliament. This will not raise them up, but will show the harshest truth, that even after 65 years of Independence women are in dire need of reservation, because of the patriarchal nature of society. Rabindranath Tagore has said, “Woman is the builder and moulder of nation’s destiny. Though delicate and soft as a lily, she has a heart, far stronger and bolder than of man. She is supreme inspiration for man’s onward march. She is, no doubt, her commanding personality, nevertheless is grimly solemn”.

THE WOMEN RESERVATION BILL

The main objective of the bill was to provide for the reservation for women and the reservation would not be less than one third of the total number of seats. For this relevant, provisions would also be inserted in Articles 331, 332 and 333. These articles deal with reservation.

The reservation has to be for an indefinite period, it will not lapse every ten 10 years like SC and ST reservation. The reserved constituencies will be determining every time through a draw of lots. The unique feature of the bill is reservation within reservation. SC and ST women will get reservation within that 33% reservation.

There is a controversy will regard to the feature of draw of lots. Because of the draw of lots a new set of constituencies will be declared. In a democratic country it is very important that there is some sort of connection between the elected and the electors, but if the elected member will be changing every 5 years, it is not possible to develop such a relation.

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Also, in the Bill it has been mentioned that the states and UTs having less than three MPs won’t have women’s reservation. As a result this would not benefit many North eastern states and Union territories.

HISTORY

The first time Indian female participated in some nationalist movement was the Swadeshi movement in Bengal (1905-08).

The origin of female suffrage movement led Forbes 1979 to state that – “the firm insistence of organized women that they be treated as equals of men on the franchise issue emerged not from the perceptions of the needs of the women in India, but as the result of the influence of certain British women, in case of the first demand for the franchise, 1917 and as a response to the nationalist movement, in the case of the second demand for franchise, 1927-33”.

As a result of this limited suffrage rights were extended to women in different provinces in India between 1920 and 1929. But it was granted to a very narrow section based on property qualifications. Government of India Act, 1935 was also limited to literacy, property ownership or marriage to propertied men. This Act also granted 41 seats reserved for women in provincial legislature as well as limited reservation in central legislature. At that point of time 80 women legislators came up and India had the third largest number of women legislators in 1937. After Independence in 1947 they were not granted reservation. We see how low were the number of women in the legislation from the first Lok Sabha elections, as few political parties granted them few seats. But the women who formed the part of politics, they should commendable success in the same. They proved their worth as Prime Minister, Deputy Prime Minister, and Chief Minister etc. But one thing in common was that to whichever political parties woman belonged to, they were allotted ‘soft’ or ‘sensitive’ portfolios like health, culture, welfare, education, women and child development. Women have not been allotted portfolios like commerce, defence, finance, though Indira Gandhi being an exception to this. This way they been discriminated and for this a

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change is needed but not necessarily in the form of reservation. Because reservation will increase their number but will they still be granted portfolios like commerce and defense, is a big question. Also they might have to face discrimination in the house, when they would not be allowed to speak, or all their arguments will be rejected. So, all the aspects of the problem needs to be envisaged, before we reach the conclusion of reservation.

LEGAL PROVISIONS AND IMPACT OF 73RD AND 74TH AMENDMENTS

Articles 14, 15 and 16 of the constitution of India, talk about gender equality and no discrimination to be made on grounds of sex. But there is a specific clause to it which says that special provisions made in regard of women and children won’t lead to discrimination. It is done to empower them. Also Article 51A confers a duty on every citizen of India that they should respect the dignity of women. Also other than Fundamental rights, Directive principles of State Policy also talk about the development and empowerment of women.

All these articles have failed to achieve what they had envisaged. Though, there is no direct violation of equality or there is direct discrimination, but indirectly it exists. Nothing is being done about the same. Articles 14 and 15 have failed considerably.

BUT WHEN WE COME TO ARTICLE 16(4) OF THE CONSTITUTION CAN THE RESERVATION BE MADE FOR THE WOMEN IN THE PARLIAMENT?

When we talk about reservation first thing that comes to our mind is that, the particular group is backward or weak, and hence they are demanding reservation so as to attain a certain level. But if we say they are backward or weak in case of gender, the argument would not stand according to the ruling of the Supreme Court in Janaki Prasad v State of Jammu and Kashmir\(^8\). In this case Supreme Court has explicitly mentioned that to be classified as backward, a class must be compared in backwardness with Scheduled Castes and Scheduled Tribes. Women have not been declared as backward by the Supreme Court, though they have also not restricted it to SC and ST reservation under Article 16(4) in Indra Sawhney v Union of India\(^9\) case; they have included

\(^8\) AIR 1973 SC 930.
\(^9\) AIR 1993 SC 477.
Muslim minority and other such minorities as well. The Supreme Court also did not lay down a test to determine backwardness. But the Court has clarified certain things in that regard –

“Nor is it possible or advisable for the Court to lay down any such procedure or method. It must be left to the authority appointed to identify. It is not correct to say backward class contemplated by Article 16(4) is limited to the socially and educationally backward classes referred to in Article 15(4) and Article 340. It is much wider. The accent in Article 16(4) appears to be on social backwardness. Of course, social, educational and economic backwardness are closely intertwined in the Indian context”.

It is quite clear that women cannot be identified as socially, economically and educationally backward, seeing the present conditions of the modern society. A special provision has also been made for them under Article 15. Article 15(3) says that – “Nothing in this article shall prevent the State from making any special provision for women and children”\(^\text{10}\). This article without specifically identifying women as socially and educationally backward class of citizens confers some special privilege. Nothing of this type has been mentioned in Article 16. The framers of the constitution did not intend to make special provision for women with respect to any kind of employment opportunities including public offices and legislation. If we go to the constituent Assembly discussions we come to the discussion that B.N. Rau had with Justice Frankfurt, they had stated that the legal framework needs to be invoked, for the purpose of prohibiting employment of women for a certain period before and after the child birth.\(^\text{11}\) Therefore if the members of the Constituent Assembly wished to provide reservation or some special treatment for women under Article 16 then they would have mentioned that as well.\(^\text{12}\)

**ENACTMENTS AND PROVISIONS FOR WOMEN**

Constitution of India envisages equality of gender and has made concerted efforts for the same. Various enactments have also been passed. Dowry Prohibition Act 1961, Medical Termination of Pregnancy Act, 1971, Child Marriage Restraint Act 1976, Equal Remuneration Act, 1976, and Pre Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1992 are some of

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\(^{10}\) Constitution of India, Article 15(3).


them.\textsuperscript{13} Grants-in-aid programme has also been set up for the development of the women and children.

A department for the development of women and child has been set up in 1985 to give a distinct identity and nodal point on matters relating to women’s development. Also National Commission on women was created in 1992 and various international treaties and conventions have also been ratified.

The tenth plan (2002-2007) approach aimed at empowering women through translating the National Policy for Empowerment of Women in action. This policy created number of administrative agencies for implementing programs for women development.

Other than these enactments many departments and committees has also come up, to study the status of the women and to empower them.

\textbf{73RD AND 74TH AMENDMENTS}

Out of all these enactments and provisions, one very important enactment has been passed. The 73\textsuperscript{rd} and 74\textsuperscript{th} constitutional amendments provide for 33 percent of reservation for women in local self-governing bodies and this thus increased the participation of rural women in Panchayat and local self-bodies.

This came up because of the demand for greater representation in political institutions. Committee on the Status of Women in India (CSWI) suggested that the representation of women especially at the grass root level in the political institutions needs to be increased. In 1988, the National Perspective Plan for Women suggested for 30\% quota for women at all levels of elective bodies.\textsuperscript{14} National consensus resulted in adoption of 73\textsuperscript{rd} and 74\textsuperscript{th} Amendments.

The 73\textsuperscript{rd} and 74\textsuperscript{th} amendment has made a very positive impact with regard to the literacy rate. As they want to be the part of the political set up they realize the need for education. They are not only educating themselves but also their daughters. They are also hearing problems very


patiently and it has also been seen that they are more honest and accurate in presenting issues in front of the decision making authorities. Women at Panchayat level also believe in communal harmony.

But the most important thing of the amendment was to bring about women empowerment through reservation, which has failed terribly. Generally women from age group 25-45 participate in politics. They manage politics along with their household obligations. By these amendments women had been active in mass movements, but they couldn’t make uninfluenced decisions. They are highly influenced by their father, brother, spouse or son because they lack confidence in themselves. Also, some women who are intelligent and confident they imitate men and start inculcating their attitudes and values.

STATISTICS

In 1952 out of a total of 466 members in Lok Sabha, there were 23 women. From these only 2 were appointed as ministers and some of them served on the panel of Chairman. Rajkumari Amrit Kaur was the first cabinet Minister. In the initial stage there was the growth in representation though at a slower pace, in the elections of 1957 and 1962 there was a commendable increase of 5.0% and 7.4% in the Lok Sabha. Then till 1984 again the representation declined. It has come down till 3.3%. After that the percentage of women in the Lok Sabha has been somewhat around 8%\(^{15}\). In Rajya Sabha as well similar trend has been followed.

Since 1952 till date there had been only 8 women who have held the ministerial position of the cabinet rank, 52 ministers of the state, 20 were deputy ministers and Prime Minister – Indira Gandhi. She did hold this position from 1966-1984 with a brief interregnum during 1977-79.\(^{16}\)

Indira Gandhi had become the first women Prime Minister. Before that as well she had many important portfolios in her hand.

\(^{15}\) Subhas C. Arora, ‘Women Empowerment in India’(2002) 32 Indian Journal of Politics 124.

The debate that took place on increasing the participation of women in the legislature and the pressure from the society and political parties led the Union Minister for Law in December 1999 to introduce the 85th Amendment Bill.

**PROS AND CONS OF RESERVATION IN THE LEGISLATURE**

**PROS**

- India is a democratic country and believes in the principle of equality. The constitution of India also prohibits discrimination on the basis of sex or gender. But historically, if we see women haven’t got many opportunities in various fields including politics. In most of the fields we have quotas for women but in politics it is only at the grass root level. In the Parliament the number of women representatives is not equal to the men, though women constitute half of the population of the country. So, reservation in the parliament will have a positive impact on the socio-economic level. Also, they will be able to solve problems very effectively which are related to women. They can also take active role in interest articulation.

- Women have been granted all kinds of rights and liberties in the modern liberal era. They have freedom of expression as well as right to education and also Article 15 of the Indian Constitution, but they are still fighting for the female infanticide, dowry deaths, health, poverty, education. Women are educated but they are illiterate in terms of knowing their rights properly. So, reservation will help them to get educated about the political rights and power and help them further in the decision-making process.

- Women’s perception and thinking is way different from men. This will give political deliberations and debates a “new perspective”. The focus will shift from mere political debates to that of more sensitive and issues related to human life. This will also bring about empowerment of women at various levels and will be an inspiration for other sectors as well.

- This will bring about the empowerment of the women in the society. Empowerment is a process that enables women to gain access to, and control of, material, intellectual and

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human resources. Empowerment will challenge patriarchal ideology and male dominance. Political empowerment is the empowerment of the women in true sense; it will provide women with participation in the decision making process and influence matters that would affect the lives of the community and the society. Participation in politics is not just elections or voting it is beyond that.

- A study conducted by the UN development agencies about the status of women in India, saw that they have little or no say in the decision making process.\(^\text{18}\) So, we see how dire circumstances are. It is imperative for us to have this reservation policy for women.

**CONS**

- Reservation is not the only solution. Reservation would not empower women, it is showing how weak and dependent, vulnerable women are. At the grass root level they are getting reservation, a founding stone has been laid down; an initiative support has already been provided. If we think of the question of empowerment, then we are well aware of the fact of increasing participation and success of women in various fields including politics and also socio-economic sectors. Also, the studies reveal that representation will only be formal because in a country like India, where Patriarchy is so deep, men will continue to dominate and influence women’s opinion. This has been seen in representation of women at the grass root level. The use of phrases like ‘pati-pradhans’, ‘co-pradhan’, ‘invisible hand’ are common.

- The 73\(^{rd}\) and 74\(^{th}\) Amendments that has taken place, rural communities can elect women representatives but women lack the require skills to be effective representatives. They have power and responsibility but the condition of empowering them is still the same. NGOs come into picture because of this, and they are helping women basically on self-reliant development. They are also assisted for income generation in a number of ways. Despite of so many efforts that are being put in by the NGOs, women still continue to be politically weak, economically backward. How can you presume that then the reservation will be of any help? It will just be a window dressing and nothing more.

• There are various political parties who support reservation, but they themselves do not have sufficient number of women representatives in their parties. What if the political parties ensure sufficient number of women in the society, we will not have the need for reservation. Political parties they compete among themselves and they discriminate not only in allotment of seats but also in the party rank and chain of command. This is because of the male dominance and patriarchal mindset that excludes women from the electoral process. If we see in the last three general elections the success rate for women candidates was 11% as compared to the success rate of men 6%. This completely demolishes the arguments of weaker section and being intellectually not same as men.

• Also, the political parties will be forced to identify women with the party agenda and include her in the party even if she completely doesn’t fulfill the party’s agenda. This is just taking quantity over quality. Also, this will widen up the gender gap because deserving men will feel that their seat has been taken up by women and also the sentiments of deserving women will be hurt.

• We already have reservation in the Parliament with regard to SC and ST candidates and now reservation for women as well, this will make reservation more than 50%, and there will be no merit left in the parliament. We need deserving candidates and reserved candidates to make decisions for the country.

INTERNATIONAL SCENARIO

It is quite alarming to know that globally, women are considered weaker than men, they are facing ill-treatment, under representation till today and not only in few nations, but around the globe. Statistically as well it has been seen that out of all the legislators of the world, women account for only 14% of the legislator and only 11 countries has crossed 30%.


The countries who have used reservation system are the ones, having higher number of women legislators like Sweden, Denmark, Germany, Norway, Iceland, Netherlands, South Africa, Costa Rica, Argentina and Mozambique\(^{21}\).

Also, the critical mass theory which talks about giving sufficient number of representation to boost the morale of that particular group (women in case of India) has been applied in lot of countries globally. This theory has been not that successful, as it looks on the first face.

In 1997 British Parliament saw sudden increase in the number of women from 9.2 to 18.2% in the House of Commons. At this point everybody thought that this will bring radical revolution in the predominant culture of Westminster. But according to Perkins, 1999; Lovenduski and Norris, 2003 this did not come out to be true. It was seen that men’s and women’s idea coincided on many issues and hence they could not alter policies. They could not bring about any change in the Britain’s role in the European Union, the traditional role of the state in the economy or moral traditionalism. The most unaccepted thing happened, when in the Labour cuts in benefits for single mothers were more likely to be supported by women than men MPs. But the study, found that women MPs were slightly less likely to rebel than men MPs.\(^{22}\) Thus critical mass theory did not have any impact on the policy outcomes of 1997 British Parliament.

The critical mass theory was also tested in New Zealand, and debates were mostly around the Hansard Parliamentary debates from 1975 to 1999. In New Zealand as well as critical mass theory has failed. In the discussion of 1998 Paid Parental Leave Bill, 4 women opposed the provisions to the bill. Another interesting phenomenon seen in New Zealand is that women showed more masculine behavior. They showed more aggression in the Parliament. Even, in Rwanda, the studies had shown that the increased women representation in parliament has had little effect on policy outputs.

Internationally, as well it has been seen that the reservation system has not been successful.


\(^{22}\) Ibid (n17).
In Australia as well, the party has adopted the quota system at the party level. It has done it voluntarily. But the result of the same was that the women candidates who were elected had some family connection with politicians.

Also, women detest reservation, they will be more proud if they get that particular position on merit, like the leader of Liberal Party of Australia Ms Chris McDiven felt getting that position on merit. She said, she would never prefer to be chosen as a “number” for the parliament.

The Beijing Declaration (1995) says: “We are convinced that Women’s empowerment and their full participation on the basis of equality in all spheres of society, including participation in the decision-making process and access to power, are fundamental for the achievement of equality, development and peace.”

It is estimated that women are around 70 per cent of nearly 1300 million people who are poor and are living in pathetic conditions. Majority of the poverty stricken people in developing countries are women which is a major reason of their under development

United Nation’s Human Development Reports after 1990 suggested that the now the focus should be shifted to development of women in every aspect. Still there is widespread poverty and hunger, majority of which constitutes women. If we see the statistics they are alarming. It found that out of 192 countries only 12 have a female head who is leading the country. Countries like Australia, United States, Canada and Thailand have over 30 per cent of business head as women. Thailand has the highest number of women business leaders among them (around 40 per cent). Countries of sub-Saharan Africa have highest number of female labor force who is under informal economy. Although some of these statistics are not useful from the political perspective, but this just shows that women still suffer so many atrocities and providing reservation cannot be an end to all this.

Internationally as well we have come to the conclusion, reservation will just provide window-dressing and will just let you see, what you want to, but deep down nothing is changing. In fact, it is more shameful to see women as puppets in the hands of men, who call themselves intellectual and powerful.

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CONCLUSION

I believe reservation is not the ultimate solution, and it should not be granted, because we have other strategies that can be followed. One such strategy is that promotion through Public Campaigns to alert public opinion through usefulness and advantages for society as a whole, so that there is balanced participation of both men and women in politics and other core areas. Women can also form their own political parties along with women support groups as seen in various countries like Russia, Spain, Iceland, Nigeria, Germany, Canada, Philippines. Thus it will increase political participation of the women. They need to organize networks to create solidarity among women’s groups for the cause of women. Also Indian women can form the shadow cabinet like the Czech women. When the Czech Democratic Party was created there was not a single woman in the cabinet, so they created a shadow cabinet to show that they were equally qualified to head departments.

We can conclude that the status of women in the Indian society has not been equal to men from time immemorial. Efforts have been put in by various governments to empower women, sociologically feminist movements have also taken place, but still complete equality is yet to be established. They say women are a weaker sex, and nobody is refuting this fact, but they are not a weaker gender. There is a thin line difference between sex and gender and society needs to understand that difference. Women are intellectually, equal to men. We have lot of examples in which we have seen women have touched heights. Indira Gandhi was a very powerful leader. She has contributed to the development of the country, in a very positive way. Women are still not equal to men, but that equality cannot be achieved through reservation. Without reservation though the quantity is less but there is quality in politics. Granting them reservation for politics will be only belittling them. This would lead to the creation of dummy women leaders like Rabri Devi, and our country does not need it.

\[24\text{ Ibid (n15).}\]