



## An Analytical Study of Women's Reservation in India

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| ARTICLE DETAILS  | ABSTRACT  |
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| <b>Research Paper</b>  |   |
| <b>Keywords :</b><br><br><i>Political Representation, Reservation, Rights, Gender Equality, The Constitution of India.</i> | <p><i>The all-round development of the country can be achieved by creating and effectively implementing such a law that treats every person of the country equally and provides additional privileges to those who are backward from the mainstream of society, whether they are men or women. Gender inequality anywhere is a serious threat to human security. Equality and their welfare have been mentioned in the parts of the Indian Constitution such as Preamble, Fundamental Rights, Fundamental Duties, Directive Principles of Policy, Election, Special Provisions in respect of some classes etc.</i></p> <p><i>To achieve the objective of the Constitution and to remove gender inequality, the Indian Parliament, the state legislatures have made many unsuccessful attempts to formulate various laws and schemes and various courts have made their important decisions. A total of one-third of the seats in the Lok Sabha, state legislatures, and the National Capital Territory of Delhi's Legislative Assembly, including those designated for SCs and STs, will be reserved for women according to the Constitution (106th Amendment) Act, 2023. But despite the above efforts, women are still being exploited and discriminated against. Therefore, the government should coordinate with the public and make positive efforts for the welfare of women so that this class can get the benefits of basic necessities like equal status, shelter, education, employment, health</i></p> |

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*facilities etc. and they can walk shoulder to shoulder with men in the society.*

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## Introduction

For the all-round development of the nation, it is necessary that every citizen of the nation progresses in his/her respective fields and has high participation. This is possible only when equal opportunities are available to all and those who are lagging behind in the mainstream of the society get additional privileges. Today, the country is progressing in every field and the women of the country like the first Prime Minister Smt. Indira Gandhi, the current President Smt. Draupadi Murmu, Smt. Pratibha Patil, Smt. Sushma Swaraj, Smt. Sonia Gandhi, Smt. Sheila Dixit, Smt. Bindra Karat, Smt. Maneka Sanjay Gandhi, Smt. Jaya Bahaduri Bachchan, Ms. Mamata Banerjee, Ms. Mayawati, Ms. Jayalalitha, Smt. Vasundhara Raje Scindia, Smt. Ambika Soni, etc. have progressed in political empowerment by achieving high positions in politics. According to the published data of the 2011 census, there are 943 women per thousand men and in the estimated unpublished data of the 2021 census, the sex ratio is above one thousand and despite this percentage of women, their participation in all fields is very low. It is not at all that they have not contributed continuously and actively to improve the future of the country. History is witness that the sacrifice of women in the freedom movements of the country was no less than that of men and even today they are providing their services in homes, workplace, government or welfare. The life experiences of thousands of such women are so inspiring and in leadership positions that they are inspiring more women to emerge. But the world is facing persistent inequality in access to opportunities and decision-making power for women and men.

Women have fewer opportunities for economic participation, less access to basic and higher education, greater health and safety risks and less political representation than men. Guaranteeing women's fundamental rights and giving them the opportunity to reach their full potential is essential not only for achieving gender equality but also for meeting international development goals. Empowered women and girls contribute to the health and productivity of their families and communities, which benefits everyone. According to the Global Gender Gap Report 2021, the number of women ministers in India in the Political Empowerment Index has come down from 23.1 percent in 2019 to 9.1 percent in 2021<sup>1</sup>.

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<sup>1</sup> "Global gender gap report 2021" Available at <https://www.weforum.org/reports/global-gender-gap-report-2021>.

Economic surveys have also found that the number of women representatives in the Lok Sabha and state assemblies is very low. Article 243D<sup>2</sup> and Article 243T<sup>3</sup> respectively provide for 33 percent of the posts in Panchayati Raj and Urban Local Bodies to be reserved for women in the state legislature in rotation. Not only this, some states like Andhra Pradesh, Bihar, Chhattisgarh, Himachal Pradesh, Maharashtra, Odisha, Rajasthan, Tripura and Uttarakhand have provided 50 percent reservation for women in local body elections. Because it is believed that when women's participation increases in politics and they are in a position of power, they will raise issues related to women and will also bring about change at the national and local level. Most people believe that most of the women who are daughters, wives or daughters-in-law of influential elite families, those who contest elections, do not act as women representatives because of the reservation of posts, but are only in the position of proxies. But this is not entirely true because various surveys show that women representatives in Panchayati Raj institutions have done commendable work in the development and overall welfare of villages and many of them certainly want to work on a larger scale, although they face various challenges in the political structure prevailing in India.

The “Constitution (106<sup>th</sup> Amendment) Act, 2023” reserves one-third of all seats for women in Lok Sabha, State legislative assemblies and the Legislative Assembly of the National Capital Territory of Delhi including those reserved for SCs and STs. Despite progress the representation of women in decision-making bodies remains relatively low increasing from 5% in the first Lok Sabha to 14% in the 18<sup>th</sup> Lok Sabha.

## **Objective of the study**

This research paper critically analyses the historical context, legislative developments, implementation challenges and impact of women's reservation in India. In this research work, Indian legislations, articles, publications, judicial decisions, texts and websites have been used to achieve the objective of the study

## **Historical Background**

The debate on reservation in India is not new. The first attempt in this field was made in 1996 when the Constitution (81st Amendment) Bill, 1996 was introduced in the Lok Sabha by the United Front government seeking reservation of one-third seats for women in the Parliament and State Assemblies. The Bill was referred to a Joint Committee for consideration, which proposed to change the provision of one-

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<sup>2</sup> The Constitution of India, 1950.

<sup>3</sup> Ibid

third to not less than one-third in the Bill so that there is no scope for ambiguity and also suggested that seats should be reserved for women in the Rajya Sabha and Legislative Councils. Initially, this reservation for women was to be made for a period of 15 years and then after reviewing the results of the implemented reservation, it was to be decided whether the reservation should continue in future or not. Between 1998 and 2004, the NDA government tried several times to pass this bill but failed due to opposition from coalition partners and the opposition. In 2008, the UPA government introduced the bill in the Rajya Sabha and later it was referred to the Parliamentary Standing Committee which recommended passing the bill in its current form without any delay which was passed by the Rajya Sabha with a two-thirds majority in 2010. But again due to differences within the cabinet, the bill was never introduced in the Lok Sabha. In its 2014 and 2019 manifestos, the BJP committed to 33 percent reservation for women in Parliament and state assemblies through constitutional amendment. At last, the Women's Reservation Bill, 2023—also spelt as the Nari Shakti Vandan Adhiniyam has been passed marking a watershed moment in India's fight for gender parity in government and politics. A third of the Lok Sabha and state legislative seats are reserved under the Act.

### **Constitutional aspects**

Equality and welfare are mentioned in the preamble, fundamental rights, fundamental duties, directive principles, elections, special provisions in respect of certain classes etc. of the Indian Constitution. The preamble of the Constitution ensures social, economic and political justice, freedom of thought, opinion and belief and equality of dignity and opportunity to all citizens. According to Article 14<sup>4</sup>, every person is equal before the law. The state can only do positive discrimination to bring all persons at par with the provision of equal protection of law. In the case of *Pragati Varghese vs Cyril George Varghese*<sup>5</sup> the High Court said that Section 10 of the Indian Divorce Act discriminates on the basis of gender and hence it is unconstitutional. In the case of *Joseph Shine vs Union of India*, the Supreme Court declared Section 497 of the Indian Penal Code, 1860, which considered adultery as a crime, unconstitutional because it discriminated on the basis of gender. According to Article 15, discrimination on the basis of religion, race, caste, sex, place of birth or any of them is prohibited and the state is given the right to make special laws for women. In the case of *Valsamma Pal vs Cochin University*<sup>6</sup>, the Supreme Court determined that a woman of higher caste cannot get the benefit of this article if she marries a youth of backward caste.

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<sup>4</sup> *ibid.*

<sup>5</sup> AIR 1997 BOM 349.

<sup>6</sup> AIR 1996 SC 1011.



According to Article 16, the state will not discriminate against any citizen on the basis of religion, race, caste, sex, descent, place of birth, place of residence or any of them in employment under the state.

In the case of *Air India vs Nargis Mirza*<sup>7</sup>, the rules of Air India which provided for retirement of flight attendants on attaining the age of 35 years or on becoming pregnant for the first time were declared unconstitutional due to being discriminatory. Article 21<sup>8</sup> provides the right to life and personal liberty and the court in its important decisions under this right has held that natural justice is inherent in many rights such as right to vote, right to contest election, right to work, right to shelter, right to education, right to free legal aid, right to speedy trial etc. and the procedure established by law.

The Directive Principles of State Policy direct the state to make efforts to create such a social system for the promotion of public welfare which provides social, economic and political justice to every individual. According to Article 39<sup>9</sup>, all citizens, male and female, are given the right to get adequate means of livelihood. Article 46<sup>10</sup> talks about social justice and equality of opportunity so that appropriate measures can be taken to eliminate discrimination against women in political and public life. It is the fundamental duty of every individual to abandon such practices which are against the dignity of women.

According to Article 325<sup>11</sup>, discrimination on the basis of religion, race, caste, sex is prohibited in inclusion of a person in the electoral roll. To achieve the objective of the Constitution and to remove gender inequality, the Indian Parliament, state legislatures and various courts have made many unsuccessful attempts to create various laws and schemes through their important decisions. But despite the above efforts, the percentage of women in politics is very low. Currently, In the Lok Sabha, the percentage of women members has risen from 5-10% until 2004 to 13.6% in the current 18th Lok Sabha while in the Rajya Sabha it is 13%. Minimal representation of women in politics: Gender equality and women empowerment have always been on top of the agenda globally. Achieving gender equality and empowering all women and girls has been a goal of the United Nations in its Sustainable Development Goals and various efforts and initiatives have been taken at the global, regional and local levels to achieve this. Due to husband mindset, women in the country have faced social evils like Sati Pratha, Purdah Pratha, female foeticide, dowry system, domestic violence since ancient times. To eradicate such evils, governments, courts, NGOs and intellectuals made constitutional and legal provisions. As a result in

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<sup>7</sup> 1981 AIR 1829.

<sup>8</sup> Ibid

<sup>9</sup> Ibid

<sup>10</sup> Ibid

<sup>11</sup> Ibid.



contemporary times women have become sensitive towards their rights and have made great progress in terms of women empowerment. Gender bias is still experienced by women in both public and private spaces. As a result the position of women representatives in the Indian Parliament and state legislatures suffer from lack of gender diversity in politics.

A report titled 'The Indian Women' was published which described the reasons for the low political participation of Indian women. According to this about one-third of the women saw the patriarchal social system as an obstacle to their political participation. This system always underestimates the capabilities of women as compared to men. This social system always considers women to be second class citizens and tries to keep them away from the mainstream of social, economic and political systems. About 13 percent of women cited domestic responsibilities like child care, cooking for family members and other family reasons as the reason for their low participation in politics. Even today, division of work between men and women is given priority in Indian society. Only women are considered responsible for family work. Due to this conservative thinking, women are not able to play their adequate role not only in politics but also in other public spheres. About 7 percent of women believed that they are not able to participate in politics due to cultural norms and conservatism. Cultural restrictions include purdah system, not talking to any other man, women not going out, etc. Another reason for not having adequate participation in politics is the weak socio-economic background of women, which creates obstacles in the political participation of women. Because most women and girls in India are not able to become financially and educationally self-reliant and their dependence on others remains throughout their life. Women also take less interest in politics due to corruption, violence, need for excessive money, increasing participation of criminals in politics, etc. prevalent in Indian politics. According to the Economic Survey-2018, cultural attitude towards the role of women, household responsibilities, family illiteracy, lack of confidence, economic deprivation, violence, fear, etc. are some of the basic barriers that prevent women from participating in politics.

**Important facts of the Women's Reservation Act, 2023:** The key facts of the Women's Reservation Act, 2023 are as follows –

The Act provided for inserting Article 330A to the constitution which borrows from the provisions of Article 330, which provides for reservation of seats to SCs/STs in the Lok Sabha.

- The Bill provided that reserved seats for women may be allotted by rotation to different constituencies in states or Union Territories.



- In the seats reserved for SCs/STs, the Bill sought to provide one-third of the seats to be reserved for women on rotational basis.

The Bill introduces Article 332A, which mandates the reservation of seats for women in every state Legislative Assembly. Additionally one-third of the seats reserved for SCs and STs must be allocated for women and one-third of the total seats filled through direct elections to the Legislative Assemblies shall also be reserved for women.

Article 239AA to the constitution grants special status to the Union Territory of Delhi as national capital with regards to its administrative and legislative functioning. Article 239AA(2)(b) was amended by the bill accordingly to add that the laws framed by parliament shall apply to the National Capital territory of Delhi.

The reservation will be effective after the census conducted after the commencement of this Bill has been published. Based on the census, delimitation will be undertaken to reserve seats for women.

The reservation will be provided for a period of 15 years. However, it shall continue till such date as determined by a law made by Parliament. Seats reserved for women will be rotated after each delimitation, as determined by a law made by Parliament.

This bill reserves 33 percent of the seats for women in the Lok Sabha and all state assemblies. The reserved seats will be allocated on a rotational basis to different constituencies of the state or union territory. Reservation of seats for women will end 15 years after the implementation of this Act. There is a provision to include Article 330A in the Constitution, just as Article 330 provides for reservation of seats for Scheduled Castes and Scheduled Tribes in the Lok Sabha. But women could not be able to get the benefit of this 33 percent reservation in the 18th Lok Sabha general elections 2024. It shows this act will helpful in equality between women and men as well as in the full development of their potential, self-representation and self-determination.

### **Negative aspects of the Women's Reservation Act, 2023:**

There should be a separate quota for women of Scheduled Castes, Scheduled Tribes and Extremely Backward Classes. According to them, there is a huge difference in the social conditions of women of the upper caste and women of Scheduled Castes, Scheduled Tribes and Extremely Backward Classes. Women of this class are exploited more. They also say that there are anomalies in the provisions of the rotation of the Women which should be removed.

- This Act will only increase the representation of urban women in the Parliament.



- Only those women will benefit from this system who are currently politically active.
- Today the modern woman is so empowered that she does not need any kind of reservation to get representation in politics.
- To ensure adequate representation of women in politics, reservation should be arranged at the time of ticket distribution at the party level.

### **Disadvantages and Recommendations:**

There is a significant gender gap in the political decision-making process, in such a situation, women leaders need to come forward to inspire adolescent girls to contribute to nation building. In the year 1952, 22 seats were elected to the Lok Sabha by women, but after the current elections, only 74 women could reach the 18<sup>th</sup> Lok Sabha, which is only 14 percent. This Act reserves only 33 percent seats for women in the Lok Sabha and all state assemblies and its term is only for 15 years. Its provisions will not be applicable in the Upper House and state councils.

This Act will maintain the unequal position of women as they will not be considered as competing on the basis of merit. Reservation of seats in the Lok Sabha and all state assemblies will limit the choice of voters to women candidates. This may reduce the incentive for an MP to work for his constituency as he may be ineligible to contest re-election from that constituency. Participation of women in political decision-making can be done by bridging the educational gap, reducing gender discrimination and eliminating biased attitudes as women candidates in reserved constituencies are mostly given tickets not on the basis of their personal influence but on the basis of the influence of their husbands or other male relatives.

To overcome this dismal situation, women need to be empowered to participate in the electoral process themselves through family support. Soft quota systems are being used in democratic countries like the US, Australia and New Zealand through which gender equality can be achieved gradually over time without providing reservations. Even after so many years of independence, women's participation in Indian politics is very low. It is therefore imperative that governments analyse women's participation at various levels of elections to find out why there is so much inequality even after seven decades of independence.