

ANALYSIS OF THE 108TH CONSTITUTIONAL AMENDMENT BILL AND THE CHALLENGES

Ms. Shalini Goyal* & Mr. Siddharth Bapna **

The Constitution (One Hundred and Eighth Amendment) Bill, 2008 seeks to reserve one-third of the total number of seats for women in the Lower House of the Parliament, i.e., Lok Sabha as well as the State legislatures. The proposed amendment also seeks to reserve one-third of the total number of seats from the seats reserved for the Scheduled Castes/Scheduled Tribes (SC/ST) in the Lok Sabha and the State Legislatures for the women belonging to the same category.

The proponents of the bill argue that it will go a long way in helping the social status of women to grow in the country. On the other hand, the opponents contend that the bill will restrict the choice of voters in particular constituencies only to women candidates. Some of the stakeholders are also demanding reservation within reservation. Another argument is that the reservation would only further perpetuate the unequal status of women in the society.

This seminar paper will try to understand the object and purpose of the proposed constitutional amendment bill along with the current status of the bill. Further, arguments of the proponents and opponents of the bill will be studied and suggestions as to necessary changes will be accorded with due reference to the status of reservation for women in legislatures across the globe.

Keywords: Constitutional Amendment, Women's reservation, Parliament, representation, status of women.

Objectives

1. To understand the object and purpose of the proposed amendment to the Constitution.
2. To find out the progress being made in the passing of the proposed amendment.
3. To find out the rationale of the objection being faced by the proposed amendment.

* B.Com. LL.B. (Hons.), Batch of 2010-15, Institute of Law, Nirma University.

** B.A. LL.B. (Hons.), Batch of 2010-15, Institute of Law, Nirma University.

Research Questions

1. What are the objects and purpose of the 108th Constitutional Amendment Bill?
2. What is the current status of the proposed amendment to the Constitution?
3. What are the objections being faced by the proposed amendment and the rationale behind the same?

Research Methodology

The research methodology used for the project is doctrinal. Doctrinal research is the method of research through analysis of articles, texts, and writings by applying logic and reasoning power. This type of research methodology is generally non-empirical. The data collection for the project is depended on secondary sources. Secondary sources include writings, articles, texts, etc. which are related to the topic of research.

Introduction

Object of the Amendment

*The issue of empowerment of women has been raised in different fora in the country from time to time. Political empowerment of women is rightly perceived as a powerful and indispensable tool for eliminating gender inequality and discrimination. The Government in its National Common Minimum Programme has stated it will take lead to introduce legislation for one-third reservation of seats for women in Vidhan Sabhas and in the Lok Sabha. The aforesaid idea followed by debate amongst the political parties and in intellectuals has paved way in getting insight in the matter.*¹

Need And Requirement

Women's reservation in the Lok Sabha and the legislative assemblies has been a debate for long in the Indian political system. The need and requirement of the same has been elucidated by different bodies and experts on different occasions.

“Reservation for women is needed to compensate for the social barriers that have prevented women from participating in politics and thus making their voices heard. It is of the opinion that this Bill is a crucial affirmative step in the right direction of enhancing the participation of women in the State legislatures and Parliament and increasing the role of women in democratization of the country”.²

“Achieving the goal of equal participation of women and men in decision making will provide a balance that more accurately reflects the composition of society and is needed in order to strengthen democracy and promote its proper functioning. Without the active

¹ Statement of objects and Reasons, Constitutional (108th Amendment) Bill, 2008.

² Parliamentary Standing Committee Report on the Constitutional (108th Amendment) Bill.

participation of women and the incorporation of women's perspectives at all levels of decision-making, the goals of equality, development and peace cannot be achieved.”³

The Bill seeks⁴ to achieve and fulfil the following:

1. *Reserve, as nearly as may be, one third seats of the present strength of the House of People and Legislative Assembly of every State for women*⁵;
2. *Provide, 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*⁶;
3. *Provide for 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*⁷;
4. *Provide for reservation for women in the Legislative Assembly of the National Capital Territory of Delhi*⁸; and
5. *Provide that 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.*⁹

Rationale

The proponents of the policy of reservation argue that even though gender equality is enshrined in the Constitution of India, it is far from the reality. It requires vigorous affirmative action to ensure improvement in the condition of women. There is also evidence that political reservation has increased redistribution of resources in favour of the groups which benefit from reservation. A study¹⁰ 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 study¹¹ conducted by the Ministry of

³ Beijing Declaration and Platform for Action, Fourth World Conference on Women (September 15, 1995) Available at <http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf> (last visited February 13, 2015).

⁴ Thirty Sixth Report on The Constitution (One Hundred and Eighth Amendment) Bill, 2008, Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law And Justice, Rajya Sabha, Parliament Of India (Rajya Sabha Secretariat, New Delhi 2009), ¶2.

⁵ *Id.* ¶2 (i).

⁶ *Id.* ¶2 (ii).

⁷ *Id.* ¶2 (iii).

⁸ *Id.* ¶2 (iv).

⁹ *Id.* ¶2 (v).

¹⁰ Raghavendra Chattopadhyay and Esther Duflo, *Women as Policy Makers: Evidence from a Randomised Policy Experiment in India*, 72 *ECONOMETRICA*, No. 5, (September 2004); Lori Beaman, Esther Duflo, Rohini Pande and Petia Topalova, *Women Politicians, Gender Bias, and Policy-making in Rural India*, Background Paper for UNICEF (December 2006).

¹¹ Study on Elected Women Representatives in Panchayati Raj Institutions, Ministry of Panchayati Raj, Govt of India, April 2008.

Panchayati Raj, revealed that a sizeable proportion of women representatives perceive an enhancement in their self esteem, confidence and decision-making ability.

It is undeniable that there is inadequate representation of women in the social, economic and political life of the nation even after more than 65 years of attaining independence. Although women have been able to make their presence felt in many of the male dominated professions, however, their representation in the decision making bodies is a lot less than that of men.

Further, it is known to all that there has been a historical social exclusion of women from the political class due to various social and cultural reasons apart from the already existing patriarchal traditions. As the Parliamentary Standing Committee on Women's Reservation Bill observes: "meaningful empowerment of women can be achieved only with adequate participation by women in legislative bodies or Parliamentary machinery, as inadequate representation of women in Parliament and State legislature is a primary factor behind the general backwardness of women at all levels."¹² Reservation of seats for women is a necessary strategy to improve women's participation in the decision making process.

One of the landmark events in the history during the women's reservation movement was the vision of former Prime Minister Shri Rajiv Gandhi. Rajiv Gandhi led Congress Government incorporated the 73rd and 74th Amendment in the Constitution of India providing reservation of not less than one-third seats in the Panchayats and Nagarpalikas for women.

Such reservation ensured participation of women at the grassroot level as they occupied prominent positions in the Panchayats and Nagarpalikas and took decisions for their own life along with decisions for their rural/urban communities on many issues.

Earlier notions of women being mere proxies for male relatives have gradually ceded space to the recognition that given the opportunity to participate in the political system, women are as capable as their male counterparts. As a matter of fact, representation of women in policy making machineries is critical to the nation building process. In all walks of life, women who acquired the necessary skills and education have proved themselves capable of holding of their own. But unfortunately they have failed to gain the requisite ground in the field of politics. All these trends indicate that women's representation in politics requires special attention and positive action. This Bill is a crucial affirmative step in the right direction of enhancing the participation of women in the State legislatures and Parliament and increasing the role of women in democratization of the country. In the true democratic spirit, no class/community should be excluded from the decision making due to the social and economic barriers placed upon that gender as a whole, and merely hypothetical tokenism or symbolic participation should be avoided. 'Reservation' is a sociological concept evolved to bring about social reengineering and that reservation for women is therefore needed to make the democratic process inclusive. Incidentally, India, the largest democracy, lags much

¹² Available at <http://www.prsindia.org/uploads/media/scr%20Women%20Reservation%20Bill%202009.pdf> (last visited February 13, 2015).

behind other countries including its neighbours Pakistan and Afghanistan, when it comes to the participation of the fair sex in politics. With only 10.8 per cent of women representation in the Lok Sabha and 9 per cent in the Rajya Sabha currently, India ranks 99th among 187 countries, according to the comparative data by the Inter-Parliamentary Union. At present, India has only 62 women representatives out of 543 members in the Lok Sabha, while there are 31 female MPs in the 243- member Rajya Sabha.¹³

Background

The proposed amendment to the Constitution of India to ensure reservation for women in the lower house of the parliament and the various legislative assemblies was introduced in the year 1996 for the first time by the then H.D. Deve Gowda government as the 81st Constitutional Amendment Bill.¹⁴ However, it lapsed with the dissolution of the eleventh Lok Sabha.¹⁵

The Bill was then re-introduced in the Parliament in the year 1998 after being re-numbered as 84th Constitutional Amendment Bill. The Bill was re-introduced by the then Prime Minister Atal Bihari Vajpayee's government formed by the National Democratic Alliance (NDA).¹⁶ However, the Bill lapsed on the dissolution of the twelfth Lok Sabha.¹⁷

The Bill was then again reintroduced in the year 1999 by the NDA government itself. Successive attempts were made in the years 1999, 2002 and 2003 to get the Bill passed.¹⁸ However, due to lack of consensus among the various political parties the government of the day failed to get the Bill passed by both the houses of the Parliament.¹⁹

The United Progressive Alliance (UPA) led government then tabled the Bill in the year 2008 in the Rajya Sabha to save the bill from getting lapsed in the wake of fast approaching General elections.²⁰ In the year 2010, the cabinet cleared the Bill in the final form and the Bill was then passed by the Rajya Sabha as well.²¹

It is pertinent to note that the socio-economic status of the women in the country has not been something to be proud of. They are hampered by low levels of education, lack of employment, lack of access to health care and low social status which is evident by the increase in the crimes against females such as dowry deaths, female foeticide and domestic

¹³ Women in National Parliaments, available at <http://www.ipu.org/wmn-e/classif.htm> (last visited February 12, 2015).

¹⁴ Statement of objects and Reasons, Constitutional (108th Amendment) Bill, 2008, ¶2.

¹⁵ *Id.*

¹⁶ *Id.* ¶3.

¹⁷ *Id.*

¹⁸ Dr. Rakesh K. Singh, Women's Reservation (108th Constitutional Amendment) Bill, 16 Women's link No. 2, 25, at 25 available at <http://www.isidelhi.org.in/wl/article/rakesh1602.pdf> (last visited February 12, 2015) [hereinafter "*Rakesh on Women's Representation*"].

¹⁹ Statement of objects and Reasons, Constitutional (108th Amendment) Bill, 2008, ¶3.

²⁰ *Rakesh on Women's Representation*, at 25.

²¹ *Rakesh on Women's Representation*, at 25.

violence. It is pertinent to highlight some socio-economic and political indicators related to women in our country in the following graphs.

Census 2011 reveals that 65.46% women are literate in our country.²² In the study of census 2001, the percentage of literate women in India was only 53.7%.²³ The NSSO data shows huge disparity between urban and rural population. About 70.7% of rural males and 46.1% rural females were literate. The literacy rates among their urban counterparts were much higher at 86.3% and 72.9% respectively.²⁴

Women constitute 11% of the newly elected House. Of the larger states Madhya Pradesh has the highest percentage of women MPs (21%), followed by West Bengal (17%) and Uttar Pradesh (15%). Bias against women and girls is also reflected in the demographic ratio of 940 females for every 1,000 males.²⁵ Also, 1 in 5 women dies during childbirth, and such deaths account for more than 20 percent of the global maternal deaths. In India the legal age for marriage is 18 years for females and 21 years for males. However, about 44 percent of females, and 37 percent of males are married before the legal age.²⁶ There are areas in Madhya Pradesh, Chhattisgarh, Rajasthan, Uttar Pradesh and Bihar where the average female age at marriage continues to be below 16 years.²⁷

Contentions

The women reservation bill is not bereft of any criticism in the present draft. There are different points and contentions raised by different groups suggesting some or the other sort of amendment to the bill or entirely being against the bill itself. Some opponents contend that separate constituencies for women would only contribute in narrowing their outlook. It will further lead to perpetuation of unequal status as they will not be seen as competing on merit. For instance, in the Constituent Assembly, Mrs Renuka Ray argued against reserving seats for women: *“When there is reservation of seats for women, the question of their consideration for general seats, however competent they may be, does not usually arise. We feel that women will get more chances if the consideration is of ability alone.”*²⁸

People also contend that reservation for women will not lead to their political empowerment because (a) larger issues of electoral reforms like, measures to check criminalisation of

²² Available at http://www.censusindia.gov.in/2011-prov-results/data_files/india/table_1.pdf (last visited February 12, 2015).

²³ Available at http://www.censusindia.gov.in/Census_Data_2001/India_at_glance/literates1.aspx (last visited February 12, 2015).

²⁴ *Id.*

²⁵ Available at http://www.censusindia.gov.in/2011-prov-results/data_files/india/table_1.pdf (last visited February 12, 2015).

²⁶ Rakesh on Women's Representation, at 26.

²⁷ Rakesh on Women's Representation, at 26.

²⁸ July 18, 1947, Constituent Assembly Debates (Proceedings), Volume IV.

politics, influence of black money, internal democracy in political parties, etc. have yet to be addressed²⁹, and (b) it can lead to election of 'proxies' or relatives of male candidates.³⁰

The opponents of the bill suggest some alternate ways such as reservation in the political parties itself or dual member constituencies to enhance women's representation in the legislative body. Three alternative methods have been suggested by some experts, viz., reservation for women candidates within the different political parties, dual member constituencies having two candidates, one being a woman and increasing the number of seats in Assemblies and Parliament to accommodate sufficient women candidates.³¹

The idea of reserving seats was sought to be made a mandate by the Election Commission. However, it could not succeed as being unacceptable to the majority of parties and women's groups in the country. It was thought that it might lead to political parties giving seats to women, which they perceive are not winning seats, thereby negating actual representation of women.³²

An argument put forth against rotation of seats is that it may lead to lack of accountability and that it will prevent the incumbent from developing her constituency. However, in a democracy irrespective of rotation, it is the duty of the incumbent to work for the welfare and development of the people and the constituency.

In any particular democratic form of governance, the State and national interest should be of prime importance. As all the seats are a part of the mechanism, it should be understood that every seat will be affected at some point or the other in equal measure. The reservation of seats should be done in such a manner that the policy for reservation is known beforehand for the next three elections in order to reduce uncertainty and allow for planning and policies that should be having priority over the interest of the constituency.

One of the main issues facing the bill is the issue of quota within quota which means sub-reservation for SCs, STs, OBCs and Minority communities within the 33 percent quota. However, the Bill in the present form does not include because of lack of political consensus among the parties around this issue. There are already 429 seats excluding reserved seats for SC/ST category in the Parliament. There is no reservation for the OBC category in the abovementioned existing unreserved seats. However, still there is a number good of representation for OBC category in the Parliament currently. Similar is the situation in the State Assemblies as well. Out of the 543 seats in the lower house of the Parliament, 84 seats are reserved for Scheduled Castes and 47 are reserved for Scheduled Tribes.³³ Thus, the Bill in its present form seeks that the sub quota within this quota is that of these 131 seats, i.e., 44

²⁹ Dr. Jayaprakash Narayan et. al., *Enhancing Women's Representation in Legislatures: An Alternative to the Government Bill for Women's Representation*, FORUM FOR DEMOCRATIC REFORMS, Issue No. 116.

³⁰ Madhu Kishwar and Manushi, *The Logic of Quotas: Women's Movement Splits on the Reservation Bill*, FORUM FOR DEMOCRATIC REFORMS, Issue No. 107.

³¹ *Rakesh on Women's Representation*, at 29.

³² *Rakesh on Women's Representation*, at 29.

³³ Election Commission of India, Available at http://eci.nic.in/eci_main1/seats_of_loksabha.aspx (last visited February 13, 2015).

will have to be reserved for women belonging to SC/ST category. And these 44 seats will be a part of 181 seats reserved for women.³⁴

The following table represents a picture of representation of women in the leading countries of the world and the GDP they hold globally:

Country	Women representation in Parliament ³⁵	GDP Rank in world ³⁶	HDI Ranking in world ³⁷
Sweden	44.7%	22	12
Finland	42.5%	41	24
South Africa	41.5%	34	118
Spain	39.7%	13	27
Norway	39.6%	26	1
Denmark	39.1%	35	10
Netherlands	38.7%	17	4
Germany	36.5%	4	6
Italy	31.4%	8	26
Switzerland	31.0%	20	3
New Zealand	29.8%	54	7
Luxembourg	28.3%	73	21
France	26.2%	5	20

³⁴ Rakesh on Women's Representation, at 32.

³⁵ Women in National Parliaments, available at <http://www.ipu.org/wmn-e/classif.htm> (last visited February 12, 2015).

³⁶ World Bank Data, Available at <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD> (last visited February 12, 2015).

³⁷ United Nations Development Programme, Human Development Reports, Human Development Report 2014, Available at <http://hdr.undp.org/sites/default/files/hdr14-report-en-1.pdf> (last visited February 12, 2015).

Australia	26.0%	12	2
China	23.4%	2	91
United Kingdom	22.6%	6	14
Pakistan	20.7%	44	146
United States of America	19.3%	1	5
India	11.4%	10	135
Brazil	9.9%	7	79
Japan	8.1%	3	17

Conclusion and Suggestion

After having studied the relevant material on women's reservation bill, as the Constitutional (108th Amendment) Bill is ordinarily termed, the researcher has come to the conclusion that object and purpose of the amendment is to ensure adequate representation of women in the legislative bodies across the country. Inadequate representation of one of the two sexes results into inequality and causes injustice to their cause.

Also, currently the bill is pending with the Lower House of the Parliament of India (Lok Sabha) after having been passed by the Upper House of the Parliament (Rajya Sabha). The researcher is hopeful that the bill will get the nod of the lower house as well considering the party having majority in the house supports the bill in the present form and also forms the government of the day.

The researcher has also gone through the various contentions put forth against the reservation altogether and also against some aspects of the bill. However, after having understood the rationale sought to be achieved, the contentions seem to be irrelevant and provide no merit for any amendment.

When we see various countries of the world with respect to women's representation in the national parliaments and their respective GDP rankings and HDI rankings, it is ascertainable that better representation of women in the parliaments contributes to the overall socio-economic development of the nation. Only with the exception of Japan, having low representation of women in Parliament and having a good HDI and GDP ranking, rest other countries show that better women representation helps in improving HDI of the country.

The researcher thus, would suggest that women's reservation in the legislative bodies is of utmost importance to uplift their status and standards. The bill in its present must be passed and made into a law as expeditiously as possible.

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