

INTERNATIONAL JOURNAL OF LEGAL STUDIES AND SOCIAL SCIENCES [IJLSSS]

ISSN: 2584-1513 (Online)

Volume 2 | Issue 4 [2024] | Page 103 - 112

© 2024 International Journal of Legal Studies and Social Sciences

Follow this and additional works at: <https://www.ijlsss.com/>

In case of any queries or suggestions, kindly contact editor@ijlsss.com

CRITICAL EVALUATION OF WOMEN RESERVATION IN INDIA- CHALLENGES AND FUTURE PROSPECTS

- Kim Sharma¹ and Dr. Ajaz Afzal Lone²

ABSTRACT

The policy of reservation for women in India stands just as smoke signal of hope among those countless women who have historically faced marginalization and underrepresentation. With the institution of the Women Reservation Act, 2023, and a recent constitutional amendment, discussions surrounding this policy have gained significant momentum. While the intent behind reservation is to empower women and improve their political representation, the reality often reveals a more intricate landscape. This evaluation aims to highlight the achievements of the reservation policy while also addressing the challenges that persist. Despite notable progress in local governance, many women continue to face systemic barriers such as socio-economic inequalities and cultural biases that limit their full participation in public life. The judiciary has played a vital role in interpreting these laws, striving to uphold the principles of equality, but concerns linger about the balance between judicial intervention and the original intent of the legislation.

To fully grasp the implications of women's reservation, it is essential to explore its historical context. The journey from early feminist movements to contemporary legislative initiatives provides valuable insights into the evolving landscape of women's rights in India. This paper seeks to present a nuanced perspective on the legal framework of this act and policy's impact on women's lives, reflecting both the struggles and successes that have emerged along the way. Ultimately, the future of women's reservation in India hinges on sustained advocacy and grassroots movements. These efforts are crucial for fostering genuine empowerment, ensuring that the promise of reservation translates into real change in the lives of women across the nation. As we look ahead, it is vital to recognize the importance of community engagement and collaboration in

¹ UIIS, Chandigarh University, Gharuan, Kharar.

² UIIS, Chandigarh University, Gharuan, Kharar.

addressing the ongoing challenges that women face, as well as celebrating the progress achieved thus far.

Keywords: Reservation, Women, Empowerment, Political Representation, Systemic barriers, Judiciary, Grassroot movements.

INTRODUCTION

The struggle for gender equality in India has been a protracted battle, marked by historical injustices and social barriers. One notable aspect of this struggle has been the pursuit of women's reservation in political representation—a policy directed at correcting historical disparities and promoting women's participation in governance. Despite the constitutional provisions and legislative efforts aimed at enhancing women's political representation, many still find themselves marginalized in political discourse and decision-making processes. This paper seeks to delve into the intricate dynamics of women's reservation in India, looks into its historical context, legal framework, societal challenges, and the crucial role played by grassroots movements. Reservation often refers to allocated seats in public service sector and education opportunities. Even in legislatures to certain set of population. The fight for gender equality in India is a deeply rooted struggle, marked by a long history of social, cultural, and political challenges. The policy of reservation is been pursued by the state to correct the historical injustice done to particular set of population. At the heart of this fight is the reservation policy for women, a legislative effort designed to correct historical injustices and promote women's participation in governance. As women have fought for their rightful place in society, this policy has emerged as a vital tool in their quest for equality.

The introduction of the Women's Reservation Bill, which aims to reserve 33% of seats for women in Parliament and State Assemblies, represents a significant leap toward enhancing women's political representation. However, the path to achieving this goal has been fraught with obstacles. The Indian Constitution, adopted in 1950, laid the groundwork for gender equality by guaranteeing equal rights and opportunities for women under Article 14 (right to equality) and Article 15 (prohibition of discrimination).³ The landmark 73rd and 74th Constitutional Amendments in 1992

³ Constitution of India, 1950, Arts. 14, 15.

mandated the reservation of 33% of seats for women in local self-governance bodies (Panchayati Raj institutions and urban local bodies).⁴ This was a significant step in enhancing women's political representation at the grassroots level and served as a precursor to the push for reservations at higher legislative levels. Despite the promises of the reservation policy, many women still find themselves at the margins of political life. Issues such as lack of awareness, societal attitudes, and inadequate implementation of laws hinder progress. This paper seeks to examine these dynamics in detail, focusing on the historical context, the crucial role of law and the judiciary, and the ongoing discourse surrounding women's reservation in India. This policy is to socially uplift all those who were deprived from opportunities in the past. There are many ways through which this is provided among masses. The most prominent are giving scholarships, funds, coaching and other welfare schemes. Originally, reservation policies were designed exclusively for Scheduled Castes (SC) and Scheduled Tribes (ST) for a decade, from 1951 to 1961. However, this initial framework has been continually expanded. Following the implementation of the Mandal Commission report in 1990, the reservation system was broadened to include Other Backward Classes (OBCs). Despite these extensions, the benefits of reservation have primarily been accessed by a limited number of communities or families, often side-lining those who are genuinely deserving. Even seven decades post-independence, the demand for reservations has only intensified, highlighting ongoing disparities and the need for a more equitable approach.

HISTORICAL ASPECTS OF WOMEN'S RESERVATION

The journey toward women's reservation in India can be traced back to the early 20th century, with movements advocating for women's rights gaining momentum during the freedom struggle. Early feminists in the late 19th and early 20th centuries laid the groundwork, advocating for basic rights and social justice. Leaders like Sarojini Naidu and Kamaladevi Chattopadhyay highlighted the need for women's participation in politics.⁵ The Indian Constitution, adopted in 1950, laid the groundwork for gender equality by guaranteeing equal rights and opportunities for women under Article 14 (right to equality) and Article 15 (prohibition of discrimination). The history of women's rights in India is a tapestry woven with struggles for education, social reform, and political representation. Yet, political representation remained elusive for many decades. The Women's

⁴ Constitution of India, 1950, Arts. 243D, 243T.

⁵ Kishwar, M. (1990). *Feminism in India: A Political Perspective*. New Delhi: Sage Publications.

Indian Association, formed in 1917, played a significant role in promoting women's suffrage.⁶ The Government of India Act 1935, which granted limited voting rights to women, marked a significant step, albeit insufficient.

Post-independence, the Indian Constitution adopted in 1950 emphasized equality and non-discrimination, laying the groundwork for policies aimed at promoting women's rights. However, it wasn't until the 73rd and 74th Constitutional Amendments in 1992 that women gained formal reservation in local self-governments, mandating at least 33% of seats for women in Panchayati raj institutions and urban local bodies. The 1992 amendments to the Constitution, which mandated the reservation of one-third of seats for women in local self-governance institutions, marked a significant step forward. This legislative change empowered countless women to step into leadership roles, fostering a new generation of female leaders in villages and municipalities. However, the push for similar representation at the national and state levels faced numerous hurdles, reflecting the deep-seated gender biases within the political landscape. The Women's Reservation Bill, introduced in Parliament multiple times since 1996, aims to reserve 33% of seats in the Lok Sabha and State Assemblies for women.⁷ Yet, despite widespread support among civil society, the bill has faced political stalemates and opposition, illustrating the complex interplay of gender politics in India.

LEGAL FRAMEWORK OF WOMEN'S RESERVATION IN INDIA

The legal framework governing women's reservation is rooted in the Indian Constitution, which espouses the principles of equality and justice. Articles 14 and 15 emphasize equality before the law and prohibit discrimination on the basis of sex, while Article 46 promotes the advancement of marginalized groups, including women. The bill, while receiving widespread support from various political parties and women's organizations, faced significant opposition on multiple fronts. Critics argued that it could lead to the exclusion of marginalized groups within the women's category and raised concerns about the qualifications of reserved candidates

The judiciary has played a pivotal role in interpreting these constitutional provisions and reinforcing the need for affirmative action. Landmark cases, such as *Indira Sawhney v. Union of India*⁸,

⁶ Narasimhan, S. (2003). *The Struggle for Women's Rights in India: A Historical Overview*. Indian Historical Review, 30(2), 220-237.

⁷ Chaudhary, P. (2020). *The Women's Reservation Bill: An Analysis*. Journal of Indian Politics, 35(2), 45-59.

⁸ Indira Sawhney v. Union of India, AIR 1993 SC 477

have established the importance of reservations as a means of achieving equality. The Supreme Court has often emphasized that political representation is not just a right but a necessity for a healthy democracy. Moreover, the judiciary has addressed practical challenges in implementing reservation policies. In *K. Krishna Murthy v. Union of India*⁹, the Court underscored the need for inclusive policies and reiterated that reservations should be aimed at empowering women from all backgrounds. Such rulings highlight the judiciary's commitment to advancing women's rights while navigating the delicate balance between legislative intent and judicial activism.

Despite these judicial advances, significant challenges remain in the effective implementation of reservation policies. Issues of corruption, political patronage, and inadequate outreach efforts often undermine the intended benefits of reservation. Additionally, many women remain unaware of their rights and the provisions available to them, which poses a barrier to their political engagement. Grassroots movements and civil society organizations have played a crucial role in advocating for women's rights and ensuring that reservation policies are implemented effectively. These groups work tirelessly to raise awareness, support women candidates, and hold authorities accountable. Their efforts are essential in transforming the landscape of political representation for women in India. In summary, while the reservation policy for women has brought about meaningful changes, the journey toward true equality is ongoing. The interplay of law, judiciary, and social movements will continue to shape the discourse around women's reservation in India. As we look to the future, it is vital to ensure that these policies lead not only to increased representation but also to genuine empowerment and participation of women in all spheres of life.

Constitutional Provisions. The Indian Constitution provides a robust framework for the protection of women's rights, encapsulated in several key articles: Article 14: Guarantees equality before the law. Article 15: Prohibits discrimination on the grounds of sex. Article 16: Ensures equality of opportunity in matters of public employment.¹⁰

These articles collectively establish a constitutional foundation for gender equality and provide a legal basis for affirmative action policies, including reservation for women. The Women's Reservation Bill, which seeks to reserve 33% of seats in the Lok Sabha (the lower house of India's Parliament) and State Legislative Assemblies for women, is a critical piece of legislation aimed at enhancing gender equality in political representation. Despite being introduced in various forms over the past few decades, the bill has yet to be passed in its entirety, with multiple debates and

⁹ *K. Krishna Murthy v. Union of India*, (2010) 7 SCC 1

¹⁰ Constitution of India, 1950, Arts. 14, 15, 16

modifications. However, its core provisions remain central to the ongoing discussion about empowering women politically in India.

AN OVERVIEW OF KEY PROVISIONS OF WOMEN RESERVATION ACT

The Women's Reservation Act, formally known as the Constitution (108th Amendment) Bill, 2008, is a proposed amendment to the Indian Constitution aimed at reserving 33% of seats in the Lok Sabha (House of the People) and State Legislative Assemblies for women. Below are the key provisions of the Bill, which, if passed, will empower women with a stronger political voice in India's legislative bodies:

- **33% Reservation of Seats for Women-** The primary provision of the Bill is the reservation of 33% of the seats in the Lok Sabha and State Legislative Assemblies exclusively for women. This measure is intended to address the underrepresentation of women in India's political system and provide a more equal platform for women to engage in legislative processes.
- **Rotational System for Reserved Seats-** The Bill introduces a rotational system of reservation, meaning that the seats reserved for women will change or rotate after each election. In one election, certain constituencies will be designated as reserved for women, and in the next election, different constituencies will be reserved. This system ensures that women from different geographic regions, both urban and rural, get the opportunity to represent constituencies over time. It prevents any constituency from being permanently reserved for women, allowing a broader distribution of reserved seats.
- **Inclusion of Caste-Based Reservations within Women's Quota-** The Bill explicitly ensures that the existing caste-based reservation system (for Scheduled Castes (SC), Scheduled Tribes (ST), and Other Backward Classes (OBC)) is not disturbed. Within the 33% quota for women, women from SC, ST, and OBC backgrounds will continue to receive their respective reservations. This means that women belonging to these marginalized groups will have their own reserved seats within the 33% allocation, ensuring representation for both gender and caste-based quotas.
- **15-Year Duration of Reservation-** The reservation for women in the Lok Sabha and State Legislative Assemblies will be applicable for an initial period of 15 years from the enactment of the law. After 15 years, the Parliament may assess whether the reservation

should continue, be modified, or be removed altogether, based on progress and the evolving political landscape.

- **Exemption of Certain Constituencies from Rotation-** Some constituencies that are already reserved for SC/ST candidates under the existing reservation system may be exempted from the rotation of reserved women's seats. This ensures that the reservation for SCs/STs remains unaffected, while still allowing for gender-based quotas in other constituencies.
- **Provision for Representation in Local Governance-** While the Bill focuses on national and state-level legislative bodies, it also has provisions that influence the local governance structures. Local bodies like Panchayats and Municipalities, which already reserve seats for women, will continue to maintain their gender quotas. However, the Bill's provisions are primarily targeted at higher legislative bodies such as Parliament and State Assemblies.
- **Empowerment of the Election Commission-** The Election Commission of India is given the responsibility to oversee the implementation of the rotational system of seat reservation. The Election Commission will ensure that constituencies are appropriately rotated and that the reservation policy is adhered to during elections.
- **Amendment to Articles 81 and 170 of the Constitution-** The Constitution (108th Amendment) Bill proposes amendments to Article 81 (which deals with the composition of the Lok Sabha) and Article 170 (which deals with the composition of State Legislative Assemblies). These amendments would enable the reservation of 33% of seats for women in both national and state legislative bodies.
- **No Impact on Reserved Seats for Women in Local Elections-** The Bill's provisions for women's reservation at the national and state legislative levels do not affect the reservation provisions for women at the local body level. The 73rd and 74th Amendments, which already mandate one-third reservation for women in Panchayats and Municipalities, continue to apply independently of the Women's Reservation Bill.

The Women's Reservation Act is designed to empower women politically by ensuring their representation in national and state legislatures. By reserving 33% of seats for women and ensuring that women from SC, ST, and OBC categories are also included within the quota, the Act aims to address both gender inequality and caste-based social justice. The rotational system ensures that women from diverse constituencies have an opportunity to represent their people, while the temporary 15-year duration gives room for a review of the policy. If passed, the Act would

significantly change the political landscape of India, increasing women's participation in shaping the country's laws and policies.¹¹

JUDICIAL INTERPRETATIONS

The judiciary has played a crucial role in interpreting constitutional provisions related to women's rights. Landmark judgments have established critical precedents that support principle of affirmative action:

Vishaka v. State of Rajasthan¹² - This landmark ruling set guidelines for preventing sexual harassment in the workplace, recognizing the need for gender-sensitive policies and reinforcing the judiciary's role in protecting women's rights.

Indira Sawhney v. Union of India¹³ - In this case, the Supreme Court upheld the validity of reservations for backward classes while simultaneously emphasizing the need for equitable representation for women. The ruling affirmed that reservations could coexist with merit-based systems, thus legitimizing the demand for women's reservation.

K.K. Saxena v. Rajendra Ojha¹⁴ - The Supreme Court reiterated the importance of ensuring representation for women in public life, emphasizing that the voice of women must be heard in decision-making processes. This ruling underlined the judiciary's commitment to fostering women's empowerment through legislative means.

CHALLENGES AND CRITIQUES

Deeply entrenched patriarchal norms often lead to resistance against women in leadership roles. The perception that women are less capable in political positions persists, resulting in societal pushback against reservation policies. Critics argue that women's reservation can lead to tokenistic representation, where women elected to office may not have the agency to effect meaningful change. This raises questions about the true empowerment of women in political spaces. The tension between meritocracy and affirmative action remains a contentious issue. Critics claim that reservation undermines the principle of merit, while proponents argue that it is necessary to level

¹¹ Jha, R. (2018). *Political Representation of Women in India: The Case of Women's Reservation Bill*. Indian Journal of Political Science, 79(1), 112-125.

¹² Vishaka v. State of Rajasthan, (1997) 6 SCC 241.

¹³ Indira Sawhney v. Union of India, AIR 1993 SC 477.

¹⁴ K.K. Saxena v. Rajendra Ojha, AIR 2001 SC 1312.

the playing field in a historically unequal society. The challenges facing the reservation policy for women in India suggest that legal measures alone are insufficient to achieve meaningful gender parity. A comprehensive approach that combines legal reforms with societal transformation is crucial. This includes Awareness Campaigns, promoting awareness about the importance of women's representation in governance can help shift societal attitudes and reduce resistance, Capacity Building, Programs aimed at empowering women through education and training can enhance their political efficacy, ensuring that they are prepared to take on leadership roles, Establishing support systems for women in politics, including mentorship programs and access to resources, can facilitate their participation and success in governance.

CONCLUSION

The reservation policy for women in India represents a critical step toward achieving gender equality in political representation. While recent constitutional amendments reflect a commitment to enhancing women's representation, significant challenges remain in implementation and societal acceptance. A critical evaluation of the policy, alongside judicial interpretations, underscores the necessity for a multi-faceted approach that combines legal frameworks with cultural and societal changes. Only through such comprehensive efforts can India hope to achieve genuine gender parity in governance, ensuring that women's voices are not only heard but also valued in the political arena.

REFERENCES

- Agarwal, B. (2010). *Gender and Land Rights in South Asia*. Routledge.
- Choudhry, S., & Bhatia, G. (2018). *Women's Reservation Bill: A Political Analysis*. Routledge India.
- Dutta, K. (2015). *Women's Reservation in India: A Reality Check*. New Delhi: Academic Foundation.
- Kumar, R. (2013). *Women's Political Participation: A Comparative Study of India and the USA*. New Delhi: Gyan Publishing House.

- Jha, A. (2017). "The Role of Women in Local Governance: The Case of Panchayati Raj in India." *Journal of South Asian Studies*, 10(2), 165-182.
- Menon, N. (2014). "Reservation for Women in India: Progress and Challenges." *Economic and Political Weekly*, 49(22), 45-52.
- Mukherjee, R. (2016). "Gender Quotas in India: A Review of Policies and Challenges." *International Journal of Public Administration*, 39(5), 373-384.
- Sinha, A. (2019). "Women's Representation in India: A Study of the Legislative Assembly." *Indian Journal of Political Science*, 80(2), 401-414.
- Government of India. (2019). Report of the Committee on Women's Reservation Bill. New Delhi: Ministry of Women and Child Development.
- United Nations Development Programme (UNDP). (2015). Gender Equality and Women's Empowerment: The Role of Women in Governance. New York: UNDP.
- Theses and Dissertations
- Sharma, P. (2018). "Women's Reservation in India: An Analytical Study." Unpublished Master's Thesis, University of Delhi.
- Verma, S. (2020). "Impact of Women's Reservation on Political Participation in India." Unpublished PhD Dissertation, Jawaharlal Nehru University.
- Vishaka v. State of Rajasthan, AIR 1997 SC 3011.
- Indira Sawhney v. Union of India, AIR 1993 SC 477.
- K.K. Saxena v. Rajendra Ojha, AIR 2001 SC 1003.
- National Commission for Women. (2021). "Women's Reservation in India: A Comprehensive Overview." NCW Website.
- The Hindu. (2020). "Women's Reservation Bill: What's Next?" The Hindu.
- Centre for Social Research. (2019). "Women's Representation in Politics: An Analysis." CSR Report.