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Email: editor@whiteblacklegal.co.in

Website: www.whiteblacklegal.co.in

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Phone - +91-9990670288

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

WHITE BLACK LEGAL: THE LAW JOURNAL

RESERVATIONS FOR WOMEN AND A BRIEF UNDERSTANDING OF THE WOMENS RESERVATION BILL

By: Ragini Sharma

SYNOPSIS

The Research Paper is related to the theme of constitutional law. It covers the concept of reservations for women with specific focus on the Women's Reservation Bill 2008. The paper makes an attempt to highlight various aspects of this concept such as its necessity and the relevant provisions of the Indian Constitution which empower the parliament to enact and initiate such provisions which are also in consonance with the idea of affirmative action. This has been done with the help of major landmark cases as are included in the paper. The paper further deals with the Bill introduced in 2008 which stirred up controversy with its various aspects and implications being highlighted. The Research Paper also briefly refers to various alternative and dissenting views revolving around it.

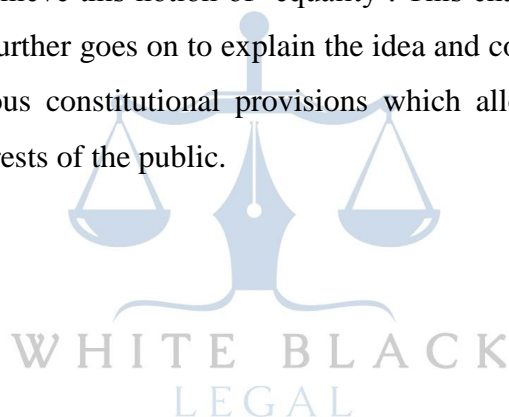


INTRODUCTION AND NEED FOR SUCH POLICIES

Women were primarily viewed as being solely responsible for maintain the domestic setup and caring for the family. The concept of female endeavour in the public sphere as being engaged in other roles was seen as an alien concept which could eventually prove to be disastrous for the traditional Indian society. This setup continued for the longest time but with the emergence of new ideas and increasing awareness due to education brought about necessary changes in the outlook of people. These ideas moulded the outlook of the newly educated elite and the women who worked extensively for removing the various social evils prevalent in society. Various such movements for the first time witnessed widespread participation by women. The Indian freedom struggle also witnessed various protests being spearheaded by strong women politicians. All these developments also led to emergence of a common consciousness amongst certain sections of society which focussed extensively on women's education and the idea of uplifting their status by remedying the evils prevalent in a majorly patriarchal society. Women were seen generally preferred to be confined to the private domestic sphere and even in that sphere were allowed only a limited freedom. Education was available only to a small section amongst women. Other evils like child marriage, a skewed division of rights and powers amongst the domestic setup, female foeticide were also responsible for the abysmal conditions of women. Therefore the need for bringing about changes was felt also to give effect to the ideas promoted in the constitution and to secure the interests of all sections of society and to ensure their development.

These ideas were also seen as being an important part of the basic concepts embodied in the preamble of the constitution such as equality, freedom, liberty and justice. These principles were considered as guiding factors for the state. Various provisions were incorporated in the constitution in accordance with the prevalent socio-economic and political scenario, which sought to protect various marginalised, and minority groups and communities which were exploited to bring them at par with the other half of the population and to protect their interests. While the prevalence of the discriminatory caste system necessitated the implementation of the system of reservations for the scheduled castes, scheduled tribes and other backward classes, the need to protect the other disadvantaged sections of society such as women was also felt. This was also linked to the questions regarding gender inequality which further fuelled formidable questions pertaining to mainstream prevalent political notions on issues like rights, citizenship and justice. These were later addressed in various reforms such as Reforms in existing personal or family laws.

Another issue linked closely to implementation of gender justice which emerged in the women's movement in India was that of the reservation of seats for women in the Parliament and state assemblies. This move was intended to be aimed at enhancing the overall participation of women in mainstream politics. Women constituted a large section of the electorate and were seen as side-lined from political practice as was evident in the dismal presence of women leaders in the various political institutions and decision making bodies. This was also linked to the intent of propagating social justice. Jurist Rawls' theory elucidated how social justice at its edifice requires the presence of fair equality of opportunity for all citizens irrespective of any discrimination, to occupy offices and various positions of power and authority. However, guaranteeing 'fair equality of opportunity' to all also required for policies characterised as positive discrimination to be enacted to favour the numerous historically oppressed and marginalised sections of Indian society such as socio-economically backward classes and women. These were not contrary to the idea of equality as espoused in the constitution but were instead seen as ways to achieve this notion of 'equality'. This chapter relates to the need for having such policies and further goes on to explain the idea and concept of affirmative action and also covers the various constitutional provisions which allow the enactment of such policies to protect the interests of the public.



AFFIRMATIVE ACTION

Affirmative Action or positive discrimination as an idea is often characterised as a mere attempt to remedy the past injustices or exploitations, to ensure better distributive justice to all. It was a part of major public policies enacted by the American legislature in the 20th Century.” The American President John F. Kennedy in 1961 signed the Executive Order 10925, which ruled that federal contractors should to some extent “take Affirmative action to ensure that applicants are employed without regard to their race, creed, colour or national origin”¹. Such policies were conceived primarily as a method of attracting and retaining minority employees, which hitherto had since the longest time remained underrepresented at the workplace, despite their proportion in the population. In America, the minorities (majorly immigrant and inhabitant people of African and Hispanic origin) and women were discriminated against. Such policies were seen as ways of undoing these injustices. Affirmative action is also termed as ‘reverse discrimination’,

i.e., a discriminatory action against the majority group intended to be in favour of minority groups that faced the brunt of exploitation by the majority.

In India socio-economic inequalities could be summed up as being highly structured in the form of caste. This caste system which regulated society and social mobility to a certain extent evolved out of a system of social practice that became an accepted way of life over several thousands of years and received its validity from being termed as being a divinely ordained system. Caste hierarchy as a result was deeply entrenched in society and overall the questions and issues around caste were extremely very complex and complicated. Caste according to many jurists and sociologists can be perceived as

"An exclusively Indian phenomenon which is not paralleled by any other institution Elsewhere in its complexity, elaboration and inflexibility"². Kroeber in his work has summed up caste system in a unique way he explains it as a ‘system of social stratification, examples of ranked aggregates of people that are usually rigid, birth-ascribed, and permits no individual mobility’³. The caste system was essentially reliant on a basic fundamental principle of hierarchy. Another issue was that of patriarchy and orthodox traditional norms of society which further led to the marginalisation and social exclusion of lower castes and women. The norms essentially protected and validated the position and authority of upper caste men who were seen as also being responsible for maintaining the social order. The extreme manifestation of

¹Shaw, W.H. and Barry, V. (2004). Moral Issues in Business. (9th Ed.) Belmont: Wadworth.

²Searle-Chatterjee and Sharma Contextualising Caste

³Kroeber, A. L. 1930 Caste

glaring inequalities like these in society led to a growing awareness and demand regarding the need for reforms to remove these. Affirmative action was intended to outweigh the inequalities and imbalances of the past and is therefore also known as 'preferential treatment', 'reverse discrimination' or 'protective discrimination'. Such policies often comprise of some level of discrimination essentially in favour of those groups which had been the victims of discrimination and exploitation.

The concept is however at times seen as being more discriminatory and problematic by being termed as a concept of prejudice and being restrictive to only selective situations in which an absolute preference over others is extended to the preferred groups. Another commonly used term is 'positive discrimination', Under the ambit of which certain special policies can be enacted to give such groups some benefit over the others to bring them at par with the other half of the society.

The Indian government has as a result to undo past injustices has adopted a policy of compulsory and compensatory discrimination which covers in its ambit certain preferential schemes. The policies of reservation in this regard are extensively and most commonly relied upon to offset the inequalities present in society. Reservation policies are a typical example of affirmative action. Under these policies a specified proportion of seats are reserved or set aside for specific groups and sections which had been previously disadvantaged. Specified number of seats are reserved in the Parliament of India, the various state legislative assemblies, the central and the state civil services, PSU's, various other central and the respective state government departments and in all public and private educational institution for certain sections and groups.. According to the Indian Constitution provides adequate provisions for the implementation of such policies and The implementation of reservation policies is justified as being a necessity to advance and protect the needs and interests of any socio-economically and educationally backward classes and sections of citizens

Implementation of such policies in India can be identified as three basic types:

- Reservations, which are crucial in making possible the availability of access to esteemed positions and resources to all disadvantaged sections.
- There are also programmes which involve providing of expenditure or the Services by certain authority for e.g. scholarships and loans for education and business, land allotments, health care and medical expenses, and free legal aid to these groups.
- There are special protections and policies also implemented.

Reservations supplemented by other important welfare initiatives can be deemed to comprise the heart of the concept of affirmative action intended to preserve the interests for the previously Disadvantaged groups in society.

CONSTITUTIONAL PROVISIONS

The preamble enumerates the basic objectives which the legislature is intended to achieve and acts as an introduction to the statute. “It embodies in a solemn form for the ideals and aspirations for which the country has struggled during the British Regime⁴”. the Preamble declared India to be a “sovereign socialist secular democratic republic and sought to secure for all its citizens justice in terms of social economic and political aspects Liberty of thought expression belief faith and worship and also equality of status an opportunity and promoting fraternity amongst all and protecting the dignity of the individual”⁵ .

it is also stated that the Preamble is of immense importance and the constitution should therefore be read and interpreted with respect to the ‘Grand and noble vision’ enshrined in the Preamble. it declared the rights and freedoms which the people of India are intended to secure for all citizens along with the basic type of Government and polity which was to be established. Article 14 to 18 of the Indian Constitution guarantees the right to equality to every citizen of India. Article 14 in itself embodies the general principle of the idea of equality before law and also prohibits any type of unreasonable discrimination amongst people. while Article 14 in itself embodies the idea of equality the following articles laid certain specific applications and implementations of the general rules of equality laid down in Article 14. Article 14 states that “the state shall not deny to any person equality before law and equal protection of the Laws within the territory of India”. The use of two expressions ‘equal protection of law’ and ‘equality before law’ is supplementary to one another. The first one is of English origin while the second one is taken from the American institution but what is common is the both these expressions aimed at establishing equality of status.

Equality before law is a negative concept implying the absence of any type of special privilege extended in favour of certain individuals and ensure that all are equal is subjected to law Whereas, equal protection of law is a more positive concept which means or refers to the equality of treatment amongst equal individuals. This means that equality can be established only amongst equals the second part equal protection of law enables the government to take

⁴ Shelat and Grover, JJ., in Kesavananda Bharati vs State of Kerala AR 1973 SC 1461

⁵ Preamble, The Constitution of India

certain actions to bring equality among the status of various classes to ensure that they exist at a similar level. The basic rule is that like should be treated alike and not that alike should be treated as like.

The rule of law imposes duty on the state to practice equality however the positive discrimination in this as per this concept requires the existence of certain rationale behind this differentiation amongst various classes of sections which requires some special provisions to be implemented for their interest. Article 14 forbids class legislation but it does not in any way for certain prohibit reasonable classification of some persons object or transactions by the legislature for the purpose of achieving certain specific ends. However classification should not in any way be “arbitrary or artificial”. It is however essential that the classification must be based on certain intelligible differentia which forms the basis of the address of the classification and that the difference must have certain rational relation to the object being sought. This relates to the existence of a Nexus correlating the two, i.e., a relation between the basis of classification and the object of the act which is making the classification

The first clause of article 15 prohibits the state from discriminating against any citizen of India on grounds such as religion, race, cast, sex, and place of birth or any of them. The second clause prohibits both the states as well as the citizens from making such discrimination with access to public places of public utility. While the third clause empowers the state to make special provisions for the protection of women and children. The fourth clause was added subsequently by the first Amendment Act 1951 which enabled state to make special provisions for the interest of backward classes of citizens and is seen as an exception to both article 15 and 29(clause 2) of the Indian Constitution. Similarly, articles 15 and 16 are seen as providing the basis for initiation of certain policies which are reflective of the intent of the positive discrimination. However it is the clause 3 of article 15 which are of special mention here as this provides for special provisions for women and children. it is also one of the exceptions laid down under classes 1 and 2 and states that there shall be no prevention of the state from making any special provisions with respect to protecting the interest of women and children. it was accepted that the women and children are vulnerable groups requiring special treatment also under article 42 women workers can be given special maternity leave and this would not be seen as in infringement of article 15 and also it would not be a violation if specific Educational Institutes are setup only for women exclusively.

special provisions for advancement of backward classes under article 15 clause rely on two things which are to the determined which include the extent of social and economic

backwardness of the classes and the limit of reservations backward classes has not been defined in the constitution. However article 340 enables the president in certain cases to appoint a Commission to investigate the conditions and determine the classes. Article 16 on the other hand guarantees equality of opportunity in terms of public Employment. It Guarantees equality of opportunity to all citizens in matters of appointment and Employment to any posts under the state. similarly article 16(4) enables the state to make certain provisions with regard to Reservation in terms of jobs in favour of any backward classes of citizens which in its opinion or not adequately represented in the services of the state. Article 17 on the other hand prohibits untouchability in all its forms.

To give effect to the concept of affirmative action the government enacted a policy to set aside twenty-seven per cent of all in the government jobs and the institutions of higher education for the various socially and educationally backward classes. The Constitution of India specifically provides for "reservations" to preserve the interests of disadvantaged groups such as, the Scheduled Castes (SCs) and the Scheduled Tribes (STs). Such reservations are present in the following areas:

- (a) in the union legislature and the state legislatures
- (b) In various services which are under the states, and
- (c) In numerous educational institutions.

Other programmes have also been initiated by the government for the upliftment of the various socio-economically and educationally backward classes. The various distributive schemes are supplemented by being accompanied with efforts to protect the backward classes against exploitation and victimisation.

The entire idea of positive discrimination relies on and consists of certain schemes allowing preferential treatment and a reservation of a percentage of government jobs and of seats in educational institutions. These activities together constitute the core of the implementation of the concept of affirmative action aimed towards the upliftment of such groups.

The constitution of India has included within its structure adequate provisions relating to political reservations for the SCs and the STs. However a key feature about the incorporation of these was that while the provisions were made obligatory initially, it was decided that these were to be valid only for a period of ten years, and its renewal was to be determined by the situation prevalent.

Another category of reservations which continues to be a contentious debatable topic is job reservations. These reservations pertain specifically to government appointments at both the union and state level and also extend to organisations which are funded to a certain extent by the government or those which are significantly subsidised. These provisions apply not only to the SCs and STs but also extend to include the OBCs as well.

This policy has been declared as one of the most controversial issue amongst all the affirmative action measures implemented in India. Another crucial category of reservation policies are the reservations in education

The intent and justification behind reservations in India is that certain special opportunities or preferential treatment should be given for some, over and above the general provisions for equality of opportunity for all. “The key aim for providing reservations for SCs and STs in civil posts and the services of the Government is to provide jobs to some persons belonging to these communities and thereby increase their representation in the services; so as to facilitate their social and economic advancement and make due place for them in society.”⁶

Article 16(4) of the Constitution⁷ specifically empowers the State to make any provision for the reservation of appointments or posts in favour of any backward class of citizens which is not adequately represented in the services under the State. With the same end in view, the Constitution envisaged in the Directive Principles of State Policy and elsewhere the economic and educational development of the weaker sections, particularly the SCs and STs Another group that receives preferential treatment in India is women and children. Under clause (3) of article 15 of the Indian Constitution, special provision for the benefit of women and children may be made by the State and such special provision will not be open to attack as being a gross violation of articles 14 or 15. The making of reservations as "compensatory discrimination" in India does not look to eradicate the caste system; it is just intended to and aimed towards boosting some oppressed castes, whether they are situated at the bottom or at the middle of the general ranking of castes.

The aim of the Part-IV of the Constitution of India is to establish a welfare state. Article 38 envisages “The Constitution “which provides that the state shall, in particular, strive to minimise inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in

⁶ DEANE, T. A commentary on the positive discrimination policy of India. *PER* [online]. 2009, vol.12, n.1 [cited 2020-06-14]. Available from: <http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1727-37812009000100003&lng=en&nrm=iso>. ISSN 1727-3781

⁷ article 16, Constitution of India

different area or engaged in different vocations⁸". This article was intended to ensure equality in all diverse spheres of an individual's life. It was also to enable the State to implement a national policy on wages in order to efficiently eliminate inequalities prevalent in various spheres of life of an individual.

Article 39 of the constitution of India envisages:

- a. "Equal right of men and women to adequate of livelihood.
- b. Distribution of ownership and control of the material resources of the community to the common good.
- c. To ensure that the economic system should not result in concentration of wealth and means of production to the common detriment.
- d. Equal pay for equal work for both men and women.
- e. To protect health and strength of workers and tender age of children and to ensure that they are not forced by economic necessity to enter avocations unsuited to their age or strength.
- f. Those children are given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment⁹"

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⁸Article 38, the constitution of India

⁹Article 39, the constitution of India

WOMEN RESERVATION BILL

The relevance of affirmative action manifested as reservations as a major tool of empowerment of women is seen as a debatable topic. Growth of women is plagued and impeded by the existence of various impediments to growth such as extremely low levels of education, existence of lack of access to health care services, skewed opportunities of employment, and a generally low social status which has also manifested in the prevalence of crimes such as female foeticide, child marriage dowry deaths and domestic violence.

Women's Reservation Bill was introduced in the upper and the lower house of the parliament with the intent to increase the participation and representation of women in mainstream Indian politics. The bill which is currently pending in the Parliament of India proposes to amend the Indian Constitution to reserve 33 per cent of the total seats in Lok Sabha, and in all the state legislative assemblies for women candidates.

The Women's Reservation Bill was introduced in the parliament on September 12, 1996 in the Lok Sabha by the United Front government under HD Deve Gowda. Introduced with the intent to benefit the women, the bill sought to reserve 33 per cent seats in Lok Sabha and also in all the state legislative assemblies for women candidates. The Criteria for reservations was also framed by the bill. As per the provisions of the bill, the seats were to be reserved according to a rotational basis. The seats that were to be reserved were to be determined by a draw of lots in a way that it would only be reserved once in every three consecutive general elections. The bill was however not passed and debates continued. The bill was reintroduced by the UPA-I government, led by the Congress in May 2008. Post this reintroduction, the bill was subsequently passed by the upper house/ Rajya Sabha on March 9, 2010, but the bill remained pending in Lok Sabha and various contentions were raised. A constitutional amendment enacted in 1993 is often considered to be the base of this bill. The constitutional amendment validated the reservation of a random one third of village council leader, or Sarpanch, positions in the gram panchayat for women. The Women's Reservation Bill was a manifestation of a long term plan to extend this pre-existing policy reservation to take into its ambit reservations in the Lok Sabha and the state legislative assemblies.

As per the Indian census held in the year 2011, the male population was approximately 623 million and the female population approximately 587 million. Thus, the females constitute roughly around 50 per cent of India's population and account for 48 per cent of the registered adult voters. These factors along with an emphasis on principles of gender equality encourage that women should be given an equal share in the decision making process.

India for its elections to the Lok Sabha has adopted a population-based electoral college but the idea of gender equality is still vague as a component of these elections. The average percentage of women parliamentarians over the recent elections is comparatively lower ranging from around 12- 16% whereas this no in the state assemblies is even more skewed and falls to 9%.

Many factors acted as contributors to the overall deplorable conditions of women as compared to men which also manifested in the inadequate representation of women. Foremost impediment among others was the existence of a strong patriarchal structure across the nation. Politics as a result was primarily considered to be a male-driven activity of the public realm beyond the reach of women who were expected to engage in their primary role as care givers and had to confine themselves to private/domestic realm, i.e., the household. Furthermore women were seen as subservient components of society and were therefore not capable of making efficient decisions in political realm.

The bill included provisions which proposed further reservation of one-third of seats within the reserved constituency for women candidates belonging to the Scheduled Castes and the Scheduled Tribes existing within the same communities.

Various arguments were raised regarding the efficacy and need of the bill. On one hand the anti-reservation lobby raised the idea how gender specific reservation went against the idea of merit and that implementation of such a policy would eventually force tickets to be awarded to women candidates instead of a significantly more politically meritorious candidate. This point was also motivated by the apparent fear amongst numerous political parties of being obligated to give tickets to women who in many cases had a low probability of winning the election. Furthermore, a section also felt that this move would only be helpful for women belonging to strongly established political families.

It was highlighted how this scenario would eventually lead to a lack of or an even more limited political exposure for women who could be made to act merely as puppets controlled by their husbands. These views stemmed from the prevalent age old traditions of patriarchal society and the lack of intent to uplift the women contended the supporters of this bill.

CASE LAWS

The concept of affirmative action being manifested as implementation of reservations was questioned extensively in the case of Indira Sawhney which declared reservations constitutionally valid along with highlighting the other aspects of the limit of reservations. Various cases followed this landmark judgement. With the passing of the 73rd and 74th constitutional amendments which included provisions for reservations for women as well, new facets were highlighted.

For understanding the various points regarding gender based reservations and constitutional provisions, it is important to see the following case verdicts.

In the case of Krishna Veni Nagam vs. Harish Nigam¹⁰ the SC held that the Articles 243-D and 243-T of the Indian Constitution provide adequate provisions has been for reservation for women in the units of local governance, i.e., Panchayats and Municipalities through the 73rd and 74th constitutional Amendments. The judgement also asserted with the Need for affirmative action being consonant with the intent behind Article 15(3) of the Constitution which has initiated the implementation of several measures eventually adopted by the legislature, executive as well as the judiciary to implement and efficiently advance the idea of gender justice. The influence of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which was one of the first international convention pertaining to the condition of women was underlined for the awareness of the international commitments on this subject which had been reiterated in various landmark judgements such as Vishaka v. State of Rajasthan¹¹; Arun Kumar Agrawal v. National Insurance Co. Ltd.¹²; Danial Latifi v. Union of India¹³;

In the verdict issued in Government of Andhra Pradesh vs. P.B. Vijayakumar & Anr¹⁴. “The respondent had submitted that if Article 16(2) is referred to along with Article 16(4) it is apparent in enabling the reservation for certain backward classes which are not adequately represented by the state however there is absence of such an express provision regulating the reservations for women under article 16. It was contended that the State did not have the requisite authority to initiate reservation in favour of women in respect to appointments or posts

¹⁰Mar 9, 2017 - 1912 OF 2014

¹¹(1997) 6 SCC 241;

¹²(2010) 9 SCC 218

¹³(2001) 7 SCC 740

¹⁴AIR 1995 SC 1648

under the State and doing so would amount to discrimination on the ground of sex therefore, contravening Article 16(2).

The court agreed regarding the absence of express rules but held that Reservation in a general sense does imply the existence of a separate quota which is to be reserved for a special category and within those specific category appointments to the reserved posts can be made on merit. However the special category for whose benefit reservation is being provided should not be pitted against people from other categories and that the aim of initiating such policies is to effectively protect the interests of the weaker sections". The court further referred to the judgement issued in the case of Indra Sawhney:-

"It cannot also be ignored that the very idea of reservation implies selection of less meritorious person. At the same time, we recognise that this much cost has to be paid, if the constitutional promise of social justice is to be redeemed."¹⁵

Reservation was considered a constitutionally valid and efficient method of eradicating backwardness and was considered as conforming to article 15(3) and specified the intricacies of the specified rules.

The case of Union of India vs. Rakesh Kumar & Ors¹⁶ and "its verdict shed light on the constitutional Seventy-Third Amendment Act, 1992, through which Part IX was added to the Constitution of India. Article 243B under this mandated the presence of Panchayats at the village, intermediate and district levels. The Legislature of a State was also empowered to make provisions with respect to the composition of Panchayats under Article 243-C. Article 243-D provides the provisions for the reservation of seats for Scheduled Castes, Scheduled Tribes, women and other backward classes as specified. It also provided for a crucial development that further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women to be allotted by rotation. This was recognised as a policy of compensatory discrimination which went beyond the ambit of 'adequate representation' and 'proportionate representation'. The extent of 'adequate representation' becomes important when a particular community is found to be under-represented in a specific domain and a certain threshold is accepted to be taken in order to

¹⁵ Indra Sawhney Etc. Etc vs Union Of India And Others, Etc. ... on 16 November, 1992 AIR 1993 SC 477, 1992 Supp 2 SCR 454(para 111)

¹⁶Appeal (civil) 6166 of 1999 Appeal (civil) 2121 of 2000 Appeal (civil) 2491-2492 of 2001

ensure equality in representation subsequently over time. Reservations for women were thus, seen as an accepted provision with regard to this”.

Another key aspect was highlighted in the case of Jitendra Kumar Singh & Anr vs. State of U.P. & Ors¹⁷

This was an important case as apart from raising other questions it also addressed the question as to whether gender based reservation, i.e., if reservation of seats for women is a contravention of Article 16(2) of the Constitution of India or not.

The Division Bench also reiterated the point accepted initially that gender specific reservation or reservations for women are valid and do not contravene the provisions of the constitution as was argued.



¹⁷CIVIL APPEAL NO.74 OF 2010

CONCLUSION

Women's under representation in the political arena has been a matter of concern especially when the women constitute a large proportion of the total electorate. Many countries have introduced reservation policies solely for the benefit of women. The Indian Constitution has provided women with equal opportunities as men however the existence of a patriarchal outlook along with a limited implementation has led to the prevalence of a more skewed ratio in terms of opportunities being available equally. This has led to the existence of a situation within which on one hand, the state promises equality and freedom to all and emphasizes on equality amongst the genders while on the other hand, the reality is still reflective of the manifestation of a patriarchal mind-set with the women being considered as subservient to the man with respect to her involvement in public affairs such as politics.

It is important to achieve a gender balance among the political representatives to ensure a much more efficient and representative body of leaders being responsible and empathetic to the needs of the common people. Women's rights were equated with human rights at the international Arena. It was with respect to this that the Beijing World Conference on Women identified and highlighted reason for women's discrimination across the world. It highlighted existence of discriminatory attitudes and practices along with and unequal power relations as being responsible for under representation of women in decision making and political set up. This was also labelled as the 'discourse of exclusion'. Another key feature of this conference was how it raised the demand for equal representation it emphasizes on the need for achieving a gender balance; the 'we dos 50-50' campaign is a key example of this. The goals of the platform were to achieve equal participation and also equal distribution of decision making and power all levels. By 1992 the 73rd and 74th Indian constitutional amendments for past which ratified one third reservation for women in rural and urban democratic bodies at all levels.

While analysing the bill and its alternative measures, One major question asked repeatedly is that if the affirmative action can to a large extent lead to political inclusion of women in areas where there underrepresented in local as well as in National politics. Answered statistically a large number of countries have introduced legislations reflective of affirmative action directed towards upliftment of women in public offices. Gender based quotas are seen as ways of enhancing women's participation in decision making. Critics of affirmative action based along gender have highlighted how at one hand reservation would lead to the presence of more female candidates but they would be concentrated only amongst the reserved constituencies. This according to them on the other hand would lead to a higher participation of male candidates in

other constituencies. They also highlight how affirmative action while is a beneficial concept, in the existing scenario; it will prove to be more problematic and would not result in any long term benefits for or the women.

Supporters of reservation has highlighted how in the Indian context there were only 11.42 per cent women who were included in the national assembly in the year 2014 to 2019, this number gradually increased to 13% over the years. They have also highlighted the constitution of political systems of political parties are important determinants of enhancing women's participation. According to them granting of certain privileges in terms of reserved seats to women candidates will play a major role in enabling the women to enter the main political arena and established them. While talking about the bill the supporters have highlighted how the big political parties in India have to be aware of their role as gatekeepers in women political participation they feel that the passing of the bill would usher in a new era of reforms for women. They also feel that while the bill is a way of bringing about considerable change another crucial aspect could be some restructuring of the internal structures of the political parties to be more conducive to women entering politics. This according to them will ensure that the bill and its implementation do not translate to mere tokenism as they consider the bill to be a way of achieving to empowerment of Indian women. The role of restructuring at the base levels in the parties has been evident in some instances in 2019, the BJD in Odisha and the TMC in West Bengal had taken steps to ensure 33 to 40% of the tickets were given to women candidates. However the overall picture still remains dismal. It is imperative that the presence of a strong political will is essential to establish a gender just equality and to ensure equality in the decision making process adopted in the country, even if the bill is delayed. While the passing of the bill still remains a long journey other steps such as restructuring of the political set up to be more inclusive and an increased public awareness is important in this regard. Also a critical understanding of the bill is important to understand the various facets and possible drawbacks of it. The inclusion of women in politics is of key importance to ensure a more efficient and dynamic decision making machinery which is more representative of the electorate.

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