

ANALYSIS OF THE CONSTITUTION (106th AMENDMENT) ACT, 2023 IN LIGHT OF PARITY CONSTITUTIONALISM

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ABSTRACT

The Constitution (106th Amendment) Act, 2023 also known as the Women Reservation Act, 2023 (Nari Shakti Vandan Adhinyam), passed through bipartisan efforts on 21st September 2023, marks a significant achievement in India's legislative history. This act aims to empower women by enhancing their political rights and addressing gender disparities in political representation. This enactment is closely aligned with art.7 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which mandates states to ensure equality in public and political life. Further, art. 4 of CEDAW advocates the adoption of temporary measures, such as gender quotas, to accelerate de facto equality between men and women in political participation. Despite the national and international acclaim for gender equality in politics, it raises critical issues concerning its implementation, particularly in the context of achieving parity constitutionalism in India.

Keywords: The Constitution (106th Amendment) Act, 2023, Parity constitutionalism, CEDAW, Gender, Equality, Political participation.

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I. INTRODUCTION

THE CONSTITUTION (106th Amendment) Act, 2023, which received the President's assent on 28th September 2023, represents the culmination of a long and challenging journey that began during the tenure of former Prime Minister Atal Bihari Vajpayee in 1996. The Act provides reservation of seats for women in the Lok Sabha and state legislative assemblies, which has been a contentious issue in Indian politics for decades. The journey of this bill started in 1996 when the first Women's Reservation Bill was introduced, aiming to reserve 33% of seats in the Lok Sabha and state legislative assemblies for women. However, the bill faced considerable opposition and could not secure approval due to a lack of consensus and resistance from various political factions. Despite being introduced four more times between 1998 and 2008, the bill consistently failed to pass due to the government's lack of majority and continued opposition. In 2009, the bill was reintroduced amid significant protests, particularly from parties concerned about the representation of backward classes within the women's quota. Despite this, the bill made substantial progress in 2010 when the Union Cabinet approved it, and it was successfully passed in the Rajya Sabha. However, it still did not secure approval in the Lok Sabha, stalling its progress again.¹

Finally, The Constitution (One Hundred and Twenty-Eighth Amendment) Bill, 2023, was introduced in the Lok Sabha on 19th September 2023. This bill proposed reserving one-third of all seats for women in the Lok Sabha and state legislative assemblies and the Legislative Assembly of the National Capital Territory of Delhi, marking a significant step forward in ensuring greater representation of women in Indian politics². Thereafter, as a bipartisan effort this bill passed by both houses and received the assent of President Droupadi Murmu on 28th September 2023, and the gazette notification was also published the same day. The essence of this amendment underscores a renewed commitment to parity constitutionalism and the importance of women's participation in governance.³ However, the legislation will come into force after the first delimitation. This raises several issues, as 50% of the world's population, women, and the majority of the assets should not be overlooked in the pursuit of parity constitutionalism. Based on data, women in India failed to secure more than 10 percent of the

¹ PRS India, “Vital Stats Profile of the 18th Lok Sabha” (June 6th,2024) available at: https://prsindia.org/files/parliament/vital_stats/Profile-18th_LS.pdf (last visited on Aug 28, 2024)

² Tiya Singh, “Women's Reservation Act of 2023: A Symbolic Gesture or a Significant Stride Towards Empowerment?” *Economic and Political Weekly* 20 Mar, 2024.

³ *Ibid.*

seats in the Lok Sabha in the first fourteen general elections held between 1952 and 2004. They barely had 10% of the seats in the Lok Sabha in the 15th and 16th elections, which indicates that their representation in the body has remained remarkably low.⁴ The 17th Lok Sabha elections did, however, witness a notable change in the representation of women in India, with women securing 14% of the seats the highest percentage since the nation's independence although this is still insufficient to achieve parity. In the recent, 18th Lok Sabha election, no significant change was seen.⁵ Conversely, South Africa and Scandinavian nations like Sweden and Norway have more than 45% of female legislators in their national legislatures⁶. Even today, Indian women participate in politics relatively low, and found difficulty in decision making as politics is still a field that is dominated by men. This becomes a reason for the enactment of the Women Reservation Act, 2023. Despite the numerous beneficial initiatives implemented to advance and safeguard women's rights, women continue to be deprived of parity in decision-making.

In light of the above observation, the paper aims to decode the Constitution (106th Amendment) Act, 2023 called the Women Reservation Act, 2023 (Nari Shakti Vandan Adhiniyam) in context of the Parity Constitutionalism. This paper delves into the concept of parity constitutionalism, tracing its evolution from the Vedic period through medieval and modern times. The analysis further explores the constitutional validity, issues, and challenges of the Women's Reservation Act, of 2023, through the lens of CEDAW. By critically assessing the alignment between the Act and international standards, this paper aims to provide insights into how India can achieve true gender parity in political participation.

II. FOUNDATIONS OF PARITY CONSTITUTIONALISM IN INDIA

यत्र नाययस्तुपूज्यन्ते, रमन्तेतत्र देवताः⁷

(sloka taken from Manusmruthi which means where Women are honored, divinity blossoms there)

⁴ *Ibid.*

⁵ *Supra* note 2.

⁶ *Ibid.*

⁷ Ganganath Jha, *Manusmriti with the Commentary of Medhatithi* Verse 3.56 (1920) available at: <https://www.wisdomlib.org/hinduism/book/manusmriti-with-the-commentary-of-medhatithi/d/doc199834.html> (last visited on Aug 3, 2024).

Parity constitutionalism combines the ideals of parity democracy with constitutionalism to achieve gender equality within a constitutional framework. It underlines the need for equal representation and participation of men and women in political decision-making processes. This notion proposes that women have a major presence at all levels of government and decision-making bodies to guarantee that their viewpoints and interests are effectively represented.⁸ It frequently requires the application of mandatory rules for equal gender representation, such as gender quotas or affirmative action initiatives. This is to be noted that the principle of parity constitutionalism in Indian women's political standing has changed significantly over time.

Vedic Age and Parity Constitutionalism

In the pre-Vedic period, Indian culture was matriarchal, with women having a higher status than men. They had equal rights and were not limited to Purdah. During the Vedic period, women were free to marry whoever they wanted and were actively involved in politics. While arranged marriages were frequent, weddings of choice (swayamvara) were also permitted. Women were allowed to remain single, and there was no marriage age limit. The Atharvaveda, allowed bereaved women to remarry, representing a type of rebirth. Sati (burning widows with their husband's funeral pyre) was not practiced throughout this period. Although wealthier men practiced polygamy, all spouses were treated equally.⁹ Women without brothers were entitled to a share of their father's estate, emphasizing shared ownership of family property between husband and wife.¹⁰ Women started taking part in religious rituals, going to official events and gatherings, and making their own unique contributions throughout this time. Daughters were encouraged to study the Vedas and their births were welcomed. Parents did not find it difficult to marry off their daughters, and since remarriage was permitted, there was no need to fear becoming widowed. The Vedas gave way to the Upanishadic era, which established God's eminence. Several women in this age committed their entire careers to studying philosophy. Remarkably, women like Gargi and Maitraye pursued philosophical studies as well, pointing

⁸ R Dixon, 'Women in Our Democracy: Here's the Good News, and the Not So Good', Sydney Morning Herald, available at: <https://www.smh.com.au/by/rosalind-dixon-p4yvy7> (visited on Jan 12, 2024).

⁹ "Dr Jayaprakash Narayan, Dhirubhai Sheth, Yogendra Yadav, Madhu Kishwar, Manushi, *Enhancing Women's Representation in Legislatures: An Alternative to the Government Bill for Women's Representation*," Forum for Democratic Reforms —, Issue 116, available at: <https://ekcenter.fdrindia.org/sites/default/files/AdvocacyPapers/Enhancing%20Women%27s%20Representation%20in%20Legislatures%20-%20to%20update.pdf>. (last visited on Jan 16, 2024).

¹⁰ Girija, Khanna and Verghese, *Mariamamma Indian Women Today* 67-68 (Vikas Publishing House, 1st edn., New Delhi 1978).

to a growing tendency in female education.¹¹ This divine age is something equated with the golden age of parity and gender equality in India. Then, the smriti period began.

During the Smriti period, Manu, a great Hindu philosopher, wrote the influential Manu Smriti, which outlines regulations for Hindu religious practice. Unfortunately, Manu's viewpoint linked women with outcasts and animals, justifying occasional physical punishment for them. This presented women as unchaste and immoral, asking for men to keep them under constant surveillance their entire lives. This greatly curtailed women's freedom, resulting in a deterioration of their place in Hindu society. Women were denied the opportunity to choose their spouses, and their property rights were restricted. Girls were not allowed to study alongside boys under male teachers, therefore they were limited to household responsibilities. As a result, women were restricted to household responsibilities, creating a cycle of limited options and restrictions. Women's lives in India underwent considerable changes during the medieval period, which lasted from approximately 1200 to 1757 AD. Scholars offer many explanations for the shifts in societal dynamics throughout this period. Furthermore, it is observed that the growing importance of ancestral worship during this time period contributed to males being valued more highly than daughters.

Some researchers ascribe the drop in daughter regard to the influence of the Upanishads, Buddhism, and Jainism.¹² To keep their daughters from becoming nuns, parents frequently arranged early marriages for them. Inter-marriage between Aryan and non-Aryan cultures helped shape cultural standards. Although weddings were permitted, non-Aryan women were barred from participating in religious rites due to a lack of Sanskrit education.

Medieval Age and Parity Constitutionalism

The arrival of Muslim kings resulted in substantial changes in the status of women. A perceived deterioration happened during what is known as a "Dark Age" for women, which was characterized by severe restrictions imposed by Muslim and Hindu communities. Sati was reintroduced during the Muslim period, especially in Rajasthan and colonial Bengal, when women were forced to immolate themselves on their husband's burial pyre. During this period,

¹¹ Dr. Viplav, *Women's contribution in India*, 220 (Rahul Publishing House, Meerut, 2013).

¹² B. Goswami, *Indian Women in Politics*, 20-22 (Abhishek Publications, 1st ed., Chandigarh, 2012).

widow remarriage was strictly prohibited, and widows were restricted from wearing bright clothing and accessories. Jauhar, a Rajput women's practice, involving self-immolation to avoid being captured as sex slaves during wartime. The Purdah system, which was popular during the Muslim period, limited women's educational possibilities and subjected them to irrational norms like child marriage, Sati, dowry systems, and the prohibition on widow remarriage. Women were thought to be physically and mentally inferior to males, which contributed to their deteriorating status throughout this time period. Women's social and economic position underwent substantial changes during the British period in India following the fall of the Mughal Empire.

British Age and Parity Constitutionalism

When the British arrived in the mid-eighteenth century, India was dominated by orthodox practices that confined women. The British rulers were progressive in their ideas and aimed to unify the kingdom by removing illogical customs. They developed a new economic structure and educational system, which influenced Indian women. European ladies, who appeared in public without constraints, served as an inspiration for Indian women seeking liberation.¹³

Social reformers such as Raja Ram Mohan Roy, with the backing of Lord Bentinck, passed legislation against customs such as Sati, which became criminal during the British era. Raja Ram Mohan Roy founded Bramosamaj to promote gender equality and women's liberation. Ishwar Chandra Vidyasagar, with British help, advocated for the Widow Remarriage Act. In 1917, Annie Besant founded the Women's Indian Association to promote equal voting rights for Indian women and men. The Indian National Congress in Calcutta backed this demand, resulting in the founding of the Southborough Franchise Committee, which gathered information and considered women's requests for voting rights. The Indian national movement was the driving force behind the demand for women's reservations in Indian politics. Together, the leaders of three women's organizations, Begum Shah Nawaz and Sarojini Naidu, presented an official memorandum to the British Prime Minister in 1931 on the status of women under the new Constitution.¹⁴

¹³ India passes law to reserve seats for women legislators *available at*: <https://asiapacific.unwomen.org/en/stories/news/2023/10/india-passes-law-to-reserve-seats-for-women-legislators> (last visited June 4, 2024).

¹⁴ Mrs. R. Kalaivani, Works of Women's Indian Association (WIA) & Role of Annie Besant 5(2) *International journal for social studies* 168 (2016).

III. CONSTITUTIONAL PROVISIONS AND CONSTITUENT ASSEMBLY DEBATES ON WOMEN'S RESERVATION IN POLITICS

The Constitution of India not only guaranteed equality before the law¹⁵ and prohibited discrimination on the basis of sex¹⁶ but also allowed for positive discrimination in favor of women under art. 15(3). Additionally, the Constitution included several provisions aimed at promoting gender equality, such as ensuring equal pay for equal work¹⁷ safeguarding the right to livelihood for both men and women under art. 39(a), and guaranteeing fair and humane working conditions and maternity relief under art. 42.¹⁸ By establishing the principles of equality before the law and prohibiting discrimination, it set the stage for future reforms aimed at improving the safety and status of women in India. The constitution Adopted in 1950, just three years after India gained independence, laid the roots for gender equality as a fundamental right. This can be seen through in constitutional assembly debates.¹⁹

The Constituent Assembly of India included only fifteen women representatives. Although often overlooked in discussions about the drafting of the Indian Constitution, these women played a critical role in representing diverse perspectives within the largely male-dominated Assembly. Among them, ten actively engaged in the debates, advocating against preferential treatment in favor of a merit-based approach.

“Hansa Mehta, one of the founding mothers of constitution was particularly vocal in her opposition to reserved seats and separate electorates for women. She argued that Indian women did not seek special treatment but rather justice and equality in the social, political, and economic spheres. She emphasized that true equality would be achieved through equal opportunities, not through reservations, and that cooperation between men and women was essential for the progress of the nation.”²⁰

¹⁵ The constitution of India, art. 14.

¹⁶ *Id.*, art. 15.

¹⁷ *Id.*, art. 39(d).

¹⁸ World Bank, “How Did India Successfully Reform Women’s Rights? Part II: Answers from the Movement on Protection from Violence” (June 28, 2023) *available at*: <https://wbl.worldbank.org/en/resources> (last visited on Aug 4, 2024).

¹⁹ Vislavath Rajunayak, “Limits of the Modern Political System: The Case of an Erukula Woman Sarpanch in Telangana” *Economic and Political Weekly* 4 Sep, 2021.

²⁰ Constituent Assembly Debates Vol I at. 1.9.42 on 19 Dec 1946 *available at*: <https://www.constitutionofindia.net/debates/19-dec-1946/> (last visited on July 26, 2024).

Similarly, “Renuka Ray strongly opposed reservations for women. She cited the example of Vijayalakshmi Pandit, who had been appointed as an ambassador and secured her place in the Constituent Assembly based on her merit, not her gender. Ray asserted that the women's movement in India had historically resisted special rights and reservations, focusing instead on securing equal rights, status, and opportunities for women in all areas of life. She expressed confidence that in a free India, women would be recognized for their abilities and contributions, without the need for reserved seats”²¹.

“Purnima Banerji also supported the idea of merit-based representation for women in the Assembly. When discussing the replacement of members such as Sarojini Naidu, Vijayalakshmi Pandit, and Malati Chaudhuri, Banerji argued that these seats should be filled by other qualified women. She stressed the importance of women's participation in politics and the need for adequate representation in the Assembly.”²²

Therefore, the adoption of the Indian Constitution marked a new era for women's equality in India. It recognized women's equal political rights, including the right to vote, and incorporated provisions aligned with the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). This shows the essence of parity lies in gender equality and removing the disparity in opportunity of participation and decision-making.

IV. CEAW AND THE CONSTITUTION (106th AMENDMENT) ACT, 2023: An ANALYSIS

To increase women’s right to participate in politics and decision making the first convention put forward by the United Nations Commission on the Status of Women was the Convention on the Political Rights of Women 1952.²³ It provided that women had the right to participate in the political life of their countries, including the right to vote.²⁴ The importance of women’s political participation was recognized in DEDAW (Declaration on the Elimination of all Forms

²¹ Constituent Assembly Debates Volume 4 on 18 Jul 1947 at 4.26.84 *available at*: 18 Jul 1947 Archives - Constitution of India (last visited on July 26, 2024).

²² Constituent Assembly Debates volume 10 on 11 Oct 1949 at 10.148.143 *available at*: 11 Oct 1949 Archives - Constitution of India (last visited on July 27, 2024).

²³ The Convention on Political Rights of Women, 1952.

²⁴ *Id.*, art. 1.

of Discrimination Against Women) in 1967²⁵ and later the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) in 1979, which states that women be allowed to participate at the national level and also that they be put forward for service at the international level. The National and International legislations laid the framework for women to participate equally. Still, women have not participated in politics to a great extent. Over time, it has been increasingly apparent that women's subservient status in the family and society stems from their marginalisation and lack of visibility in governance and decision-making. Women's participation in politics has been the focus of intense efforts due to this realisation and the reality that lop-sided progress was caused by the unbalanced character of political institutions.²⁶ As a result, feminists have begun questioning the validity of the current institutions and governance frameworks as well as the manner in which they uphold inequality based on gender. A critical mass of women entering the workforce is said to help advance good governance, which is predicated on a consensus-oriented, participatory approach and calls for a responsible, transparent, responsive, efficient, equitable, and inclusive government.

The Women Reservation Bill was praised globally upon its passage. However, because the Act gives women one-third of all seats in the Lok Sabha, state legislative assemblies, and the Legislative Assembly of the National Capital Territory of Delhi, it presents some questions about how to apply it in light of CEDAW to attain parity constitutionalism. Is it possible to consider a 33% reservation to be parity? or whether this figure is in line with what's needed to establish constitutional parity? This also holds true for Lok Sabha and state legislature seats allotted to SCs and STs. But the OBC women are left out of this. Is the intersectionality excluded according to a legitimate classification? Without intersectionality in the enactment, how can parity be reached?

Further, the reservation will take effect after the census performed following the publication of this act and on the basis of census, delimitation will be done to reserve seats for women. This raises several issues on the delayed for the implementation. The reservation will be valid for a duration of fifteen years. After the delimitation, seats set aside for women will be switched out by a statute passed by Parliament. This legislation will come out in force. This raise

²⁵ The Declaration on the Elimination of all Forms of Discrimination Against Women, 1967 art. 4.

²⁶ Government of India, "Report of the High-Level Committee on the Status of Women in India" 28 (Ministry of Women and Child, 2013-15).

question, whether setting delimitation as a condition for its implementation is constitutional. Furthermore, the provision of rotational constitutions comes with several issues.²⁷

Firstly, this paper will analyze the feminist jurisprudence and its evolution to understand the current issues related to gender parity, particularly in the context of the Constitution (106th Amendment) Act, 2023, also known as the Women's Reservation Bill or Nari Shakti Vandan Adhiniyam. By exploring the development of feminist thought and its impact on legal and political frameworks.

Feminist jurisprudence, as a critical field of legal theory, explores how laws and legal institutions perpetuate gender inequalities. Its evolution reflects a broad spectrum of feminist voices and perspectives, which have emerged and developed over time. To analyze the current issues related to gender parity, it is essential to understand the historical and theoretical foundations of feminist jurisprudence. Gender justice was supposed to be achieved through stronger legal protections, stricter application of the criminal justice system when handling crimes against women, and facilitating women's access to socially available goods and services during the early stages of the new women's movement, which began in the 1970s. During this time, the women's movement's political struggles were aimed against the state as well as the patriarchies that operate within the private spheres of kinship, community, and family structures. The intention was to increase the state's responsibility for the well-being of its people. Women's movements in the 1980s faced more intricate socio-political and economic situations. Therefore, Radical challenges arose in the 1990s where women's issues gained more traction in international fora, including the Fourth World Conference for Women in Beijing (1995) and the Vienna Congress on Human Rights (1994). Additionally, it was a time when the political foundation for a welfare state was weakened and free market economies were idolized.²⁸

In the 1990s, the Constitutional Amendments 73rd and 74th were also passed, with the goal of gradually transferring political authority to local communities. The 73rd Amendment to the Constitution was ratified in 1992 and went into force on April 24, 1993. With the Act, state governments gained the authority to formalize gram panchayats and facilitate their

²⁷ Ministry Law and justice, "Women's Reservation Bill 2023 [The Constitution (One Hundred Twenty-Eighth Amendment) Bill, 2023]" available at: <https://prsindia.org/billtrack/the-constitution-one-hundred-twenty-eighth-amendment-bill-2023>(last visited on Aug 22, 2024).

²⁸ Veena Poonacha, "Feminist Theorising and Politics" *Economic and Political Weekly* 25 Aug 2001.

functioning as self-governing entities. More than a million women experienced political power in their local communities through these enactments, a first for history²⁹.

Later, these initiatives the most important convention the UN adopted in its march toward women's empowerment is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which came into effect in 1979. Given its extensive scope and gender-focused outlook, the Convention has been recognized as an International Bill of Rights for Women. It was enacted on September 3, 1981, and consists of thirty articles arranged into six divisions.

Article 7³⁰ specifically addresses, “the need for equal rights in voting, running for office, and engaging in public and political spheres. It underscores the obligation of state parties to eliminate discrimination and ensure that women have the same opportunities as men in all political processes”, and, Article 8³¹ “extends this principle to the international stage, ensuring that women can represent their governments and participate in international organizations on equal terms with men. This highlights the treaty's commitment to global gender equality and the active involvement of women in international affairs.”

Analysis

The question now is whether this statute complies with articles 7 and 8 of the CEDAW, which are the relevant clauses. Whether the Women Reservation Act of 2023 will be able to guarantee women's participation and domesticate the comprehensive approach of CEDAW. Men and women must have equal rights to represent themselves and take part in decision-making, according to article 7 of CEDAW. It encompasses more than only the right to vote, which was the traditional definition of political rights.³² It demands equal involvement from women in all capacities and avenues of decision-making influence. It encompasses equitable chances to run for public office, involvement in the policy cycle, which extends from formulation to assessment, and above all equal access to public office.

Article 7 of CEDAW requires women to hold confirmed seats in all public bodies, but the Women Reservation Act of 2023 grants them exclusively in national and state legislatures.

²⁹ Nivedita Menon, *Gender and Politics in India*, 539 (Oxford University Press, New Delhi, 1999).

³⁰ The Convention on the Elimination of All Forms of Discrimination Against Women, 1979, art. 7.

³¹ *Id.*, art. 8.

³² Mohd Nazish, CEDAW and Political Empowerment of Women in India: An Analysis of Women Reservation Act 2023 13 (3) *International Journal of Advances in Social Science and Humanities* 247-248 (2024).

Contrary to the CEDAW article, which makes these provisions clear, the clauses pertaining to women's involvement in the public policy cycle and in holding public office are implicit. Women's access to public office and their ability to participate in policymaking are not specifically guaranteed by the law; but women may have more opportunity to do so if they participate more in the legislature. A possible way to look at the reserve law is as a first step in making sure that the political participation CEDAW provisions are domesticated.

Article 8 of CEDAW expands the national application of Article 7 to include international application.³³ It guarantees women's employment prospects in international organizations as well as their participation in representing their nations at the international level. Women now play a critical role in bringing about peace and resolving conflicts, as was previously discussed. The Security Council acknowledged this in “Resolution 1325 on Women, Peace, and Security” and encouraged women to serve on foreign missions. This is missing in the Constitution (106 Amendment) Act, 2023 or Women reservation Act, 2023. As the new reservation law is silent on women's representation abroad and only addresses women's participation at the national level.³⁴ It makes no specific provisions regarding women's participation in international diplomacy, official delegations, or matters of economic and military diplomacy.

The committees headed in 1996 by Geeta Mukherjee and in 2009 by Jayanthi Natarajan recommended that the government should consider expanding reservation privileges to OBCs in the future, ensuring that women from OBC backgrounds have access to these benefits as well.³⁵ And, CEDAW lays the groundwork for transformative equality and even mandates it. It addresses a wide range of intersectional demands. There is a lack of provisions for OBC women in the the Constitution (106 Amendment) Act, 2023

V. FINDINGS AND SUGGESTIONS

According to the findings, some opponents of the reservation policy contend that creating distinct constituencies for women would not only limit their perspectives but also result in the

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ Gurmeet Kaur, “Addressing OBC exclusion in India’s Women Reservation Bill” Feb 26, 2024 *available at*: <https://blogs.lse.ac.uk/humanrights/2024/02/26/addressing-obc-exclusion-in-indias-women-reservation-bill/> (last visited on June 5, 2024).

continuation of their unequal status since they would be perceived as not being able to compete on the basis of merit. Renuka Ray, for example, opposed the idea of reserving seats for women in the Constituent Assembly, saying that “when female seats are reserved, the question of their consideration for general seats, however competent they may be, does not usually arise.” Further, she said, One can believe that if skill is the only factor taken into account, women will have more opportunities.³⁶

Additionally, opponents contend that because more significant electoral reform concerns have not been addressed, including as steps to prevent the criminalization of politics, internal democracy inside political parties, and the influence of black money, reservations would not result in the political empowerment of women.³⁷

On the other hand, some scholars are in favour of the reservation of women in the political system. According to them, a group has little power to affect policymaking if it is not fairly represented in the political system. In public and political life, discrimination against women must end, according to the Convention on the Elimination of All Forms of Discrimination Against Women. Even though India has ratified the Convention, discrimination against women in decision-making bodies has persisted. Although the proportion of female MPs has grown from 5% in the first Lok Sabha to 15% in the 17th, it is still very low. Women elected under the reservation policy make greater investments in public amenities that are directly related to women's concerns, according to a 2003 study on the impact of women's reservation in panchayats. In this study on the impact of panchayat reservations on women, elected women under the quota policy make greater investments in public goods that are directly related to women's concerns.³⁸ It was observed by the Standing Committee on Personnel, Public Grievances, Law and Justice (2009) that women's seat reservations in local bodies have allowed them to contribute significantly.³⁹ Hence women reservation act is a welcome step but to achieve the Nari Shakti in its spirit it have to be implemented as per the CEDAW so that Parity constitutionalism can be achieved in its true sense. This paper identifies some challenges for

³⁶ PRS legislative research, “Women's Reservation Bill: The Issues to Consider” *The Wire* 20 Sep 2023.

³⁷ *Ibid.*

³⁸ Raghavendra Chattopadhyay and Esther Duflo, “The Impact of Reservation in the Panchayati Raj: Evidence from a Nationwide Randomized Experiment” *Economic and Political Weekly* 28 Feb 2004.

³⁹ Standing Committee on Personnel, Public Grievances, Law and Justice, “36th Report on The Constitution (One Hundred and Eighth Amendment) Bill, 2008”, (December 2009), *available at*: https://prsindia.org/files/bills_acts/bills_parliament/2008/scr_Women_Reservation_Bill_2009.pdf. (last visited on June 3, 2024).

women representation in India that act as a barrier to achieve parity constitutionalism in its true sense.

Less women representation and lack of political will

In India, women made up only 33 out of 237 members (13.9%) of the upper house, the indirectly elected Council of States, in 2022. India, the most populous democracy in the world, has over 690 million women, which puts it in the lowest percentile globally for the representation of women. There has never been more than 15% female representation in either the upper or lower chambers. A bill to impose quotas for state legislative assemblies and the lower house, the House of the People, has been lingering for 25 years after it was initially submitted.⁴⁰ In India, the government's position on women's political participation frequently seems inconsistent. On the one hand, women are allowed by law to vote, organize or join political parties, run for office, and take on official roles in the state and politics. The goal of these legal provisions is to facilitate and strengthen the process of women's empowerment. It took several decades for the Constitutional Amendment 106th Act, to be passed, and it will take another five years to put into effect.

Societal Patriarchy mindset and women representation

Certain social customs, like those maintained by Khap Panchayats, can make it more difficult for women to fully exercise their fundamental right to take part in public and political life. In some parts of India, Khap Panchayats, or traditional village councils, have a history of enforcing regressive norms and practices that restrict women's autonomy and public involvement. The contradiction that exists between societal norms and legal rights highlights the obstacles that women in India must overcome before they can truly be empowered politically.⁴¹

Male dominance and decision-making

Politicians who are women often experience great distress, especially if they are excluded within their parties. They are frequently left out of decision-making processes, marginalized,

⁴⁰ Anuja, "India: 25 years on, Women's Reservation Bill still not a reality" *Aljazeera* 8 Sep, 2021. *available at:* <https://www.aljazeera.com/news/2021/9/8/25-years-india-women-reservation-bill-elected-bodies-gender>(last visited on Aug 23, 2024).

⁴¹ UN Women, "Violence against women in politics (A study conducted in India, Nepal and Pakistan)" *available at:* <https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2014/Violence%20Against%20Women%20in%20Politics-Report.pdf> (last visited on Aug 16, 2024).

refused party invitations, and given the impression that their chances of winning elections are slim. When they don't live up to the standards set by the male party leaders and members, they become even more isolated politically. Reports of female politicians, including members of parliament, being physically assaulted during election campaigns and constituent visits have also surfaced, underscoring the risks that these women confront.

Culture of silence has increased the crime against women in politics

According to a recent study, violence against women in politics is pervasive, multifaceted, and occurs at all levels, especially for those who are first-generation participants. Not only are patriarchal, authoritarian, elitist, and gender-discriminatory attitudes common in families, but they are also seen in political parties, law enforcement, and the general public. This highlights a lack of unity among women as a result of socioeconomic disparities, which makes attempts to attain gender equality in politics even more difficult.⁴² Women party workers and elected representatives reported experiencing several forms of violence against women in politics (VAWIP), including physical violence, sexual harassment, and character assassination, during the research. Even though these problems are common, sexual harassment is still a notably underreported issue since few women feel confident or secure enough to speak out about their experiences. The pervasive social and cultural constraints that prevent women from fully and equally participating in political life are reflected in this silence.⁴³

Online abuse against women politician

A report released by Amnesty international highlighted that, in on an average 113 Indian women politician receives the abusive tweets per day. While women around the world face sexist abuse online, Indian female leaders deal with nearly twice as much harassment than their counterparts in the U.K. or the U.S., according to the report.⁴⁴ Women politicians are faced with almost constant online threats and abuse, posing a real threat to the health of our democracies.

India has achieved tremendous improvements in the domains of domestic violence and sexual harassment, which are the fruit of arduous negotiations involving numerous public and

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ Méliissa Godin, "From Threats of Gang Rape to Islamophobic Badgering, Indian Women Politicians Face High Levels of Online Abuse, Says Report" *Time Magazine*, Jan 23, 2020.

commercial partners. However, there are still a number of flaws in the current legal system and how the laws are being applied. India, for example, has not yet ratified the International Labour Organization (ILO), despite being one of the first countries to sign and ratify the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).⁴⁵ Women might not always be able to firmly reject the roles that patriarchal standards have assigned them, as the study demonstrates. Nevertheless, they are able to challenge these expectations by deftly utilizing their customary positions as mothers and wives to progressively change the rules. As a result of their familial ties often demonstrated by their roles as mothers, wives, or sisters women have, for instance, carved out political niches for themselves at the national level. These women exploit their gender identity as established by patriarchy to gain political clout rather than necessarily questioning it. It does not, however, fully serve the goal of women's empowerment when women from political families are perceived as representatives of elite groups that are ruled by strong men.

Suggestions

The act specifies that following each delimitation exercise, reserved seats would be distributed by rotation. Since delimitation is required to occur following each census after 2026, this suggests rotation roughly every ten years. MPs may be less motivated to represent their constituencies if reserved seats are rotated since they may not be able to run for re-election. Nearly 85% of women were first-time voters, and only 15% of them were able to be re-elected because the seats they were elected from were de-reserved, according to a Ministry of Panchayati Raj report that suggested ending the rotation of constituencies at the panchayat level.

The choice of voters in the reserved constituencies would be limited if a third of the seats in Parliament were set aside for women. There are two options that some experts have proposed: dual member constituencies, where certain constituencies will have two candidates, one of whom will be a woman, and reservation for candidates inside political parties, as several nations do. Dual membership constituencies are there in the countries like Sweden, Norway,

⁴⁵ World Bank, “How Did India Successfully Reform Women’s Rights? Part II: Answers from the Movement on Protection from Violence” (June 28, 2023) *available at*: <https://wbl.worldbank.org/en/resources>(last visited on Aug 4, 2024).

South Africa, Australia, France, Germany, UK house of commons, Canada, US house of responsibilities, US senate, Bangladesh, Brazil, and Japan.

The Recommendations of the Joint Select Committee include following elements:

- Review after 15 Years: The provision should be reviewed 15 years after the Act's commencement to ensure it remains a temporary measure.
- Clarification of Reservation Limit: Replace the phrase “not less than one-third” with “as nearly as may be, one-third” to provide clear limits and prevent excessive reservations.
- Rajya Sabha and Legislative Councils: Extend reservation to the Rajya Sabha and Legislative Councils, with modalities to be determined by the Government.
- SC/ST Reservation in Small States: In states with less than three reserved SC/ST seats, rotate reservations across terms to ensure women's representation over three election cycles.
- Reservation in States with Less than Three Lok Sabha Seats: Amend the Bill to ensure women’s reservation in States and Union Territories with fewer than three Lok Sabha seats.
- Anglo-Indian Community: Apply the rotation principle to Anglo-Indian members to guarantee that one nominated member is a woman.
- Include Delhi and Pondicherry: Amend the Bill to bring Delhi and Pondicherry's Legislative Assemblies under the reservation provisions.
- Omit Redundant Proviso: Remove the proviso in Article 332A about no reservation for women in states with fewer than three seats, as no such state exists.

Although the suggestions were worthy of consideration, in the end, they gave the government a reason to postpone passing the Bill. The report from the Joint Select Committee was presented to both Houses of Parliament on December 9, 1996, with strong support from female MPs from all parties and demands for its swift passage from some male colleagues. Due to the Business Advisory Committee's failure to schedule it, the Bill was not discussed during the winter session. Srikant Jena, the Union Parliamentary Affairs Minister, maintained that the Union Cabinet's approval was required. He asked female MPs to hold off until there was more political agreement, even though the prime minister had previously backed the idea. There was no set timeframe for bringing the Bill back to life when the winter session ended on December 20, 1996. The Prime Minister and other government representatives repeatedly promised to enact

the bill, but their promises were ambiguous and unreliable. Delaying in the implementation of the Constitution (106th Amendment) Act, 2023 also raises the same concern.

This paper derives the following suggestions have been made to achieve “Parity constitutionalism” using CEDAW as an alternative and add to the reservation policy. Implementing the Women's Reservation Bill effectively requires timely action to ensure increased representation of women in governance. A significant challenge lies in the rotation of reserved seats, which could discourage elected MPs from dedicating themselves to their constituencies, knowing they might not be able to contest from the same area in future elections. Addressing this concern requires strategies to maintain accountability and foster long-term service. Additionally, establishing a formalized and efficient complaint mechanism is essential for addressing issues faced by women in politics and ensuring that their grievances are promptly resolved. Political parties must also make a concerted effort to incorporate gender-sensitive policies in their manifestos, committing to creating a safe and inclusive environment for women.

To uphold ethical standards, it is crucial that political parties refrain from giving election tickets to candidates who have criminal cases related to violence against women. Imposing sanctions for non-compliance with gender-related policies could serve as a strong incentive for parties and officials to take these commitments seriously. Raising public awareness and support for women's representation in politics is equally important, as it can help foster a conducive environment for their participation. Furthermore, the legal regulation of social media is necessary to protect women from online abuse and misinformation, which can deter their involvement in the political arena. Collectively, these measures could significantly enhance gender equality in politics and strengthen democratic processes.

VI. CONCLUSION

The Constitution (106th Amendment) Act, 2023 has received widespread attention for its progressive approach to increasing women's involvement in politics. To promote gender equality, an implementation must adhere to Parity Constitutionalism and CEDAW principles. Parity Constitutionalism aims to achieve equitable representation and involvement for all genders, eliminating historical inequities and creating a more inclusive political scene. Gender parity in India has changed over time, beginning with the Vedic period, when women played important roles in social and religious arenas, and progressing through the medieval and

modern ages, when social and political developments reshaped gender norms and roles. and can benefit equally. India's Founding Mothers' opinions on women's reservation helped shape the country's approach to gender equality in politics. They envisioned a democratic framework that would gradually integrate women into political decision-making processes, taking into account both historical context and current goals for gender equality. The Women Reservation Act of 2023 is a key step toward reaching this aim. It supports CEDAW's call for equal political participation by boosting women's representation in legislative bodies. However, in order to fully fulfill its promise, the measure must be implemented with strong mechanisms in place to solve practical obstacles and guarantee that women from all backgrounds benefit equally.

While the reservation of one-third of seats for women from scheduled castes and tribes under the amendment to articles 330(A) and 332(A) of the constitution is a positive step, it remains to be seen whether it fully acknowledges the complex interplay of hierarchies and sociopolitical relationships that also affect the extent and nature of complications that surround effective women's politics. Therefore, the Constitution (106th Amendment) Act, 2023, obtained the President's assent on September 28, 2023, and marks the completion of a long and difficult road that began in 1996 under the tenure of former Prime Minister Atal Bihari Vajpayee. For decades, the Act, which focusses on seat reservations for women in the Lok Sabha and state legislative assemblies, has been a source of contention in Indian politics. This should not be repeated as “MLA and MP Pati”. The Constitutional 106 Amendment Act, known as Nari Shakti Vandan Adhiniyam, appears to be an encouraging start; however, in a country as diverse and multilayered as India, it should be accompanied by the principle of Parity Constitutionalism to improve women's ability to exercise their political choices at all levels of society, to use their agency, and to participate in the country's core decision-making processes.