

RESERVATIONS FOR WOMEN: THE WAY FORWARD

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This article deals with the issue of political reservations for women in the Union Parliament and the State legislatures. Examining the case for representation for women in the present constitutional framework in India, this article studies various factors which have contributed to the low political representation of women. Comprehensively studying the Women's Reservation Bill, first proposed in 1996, the political climate at the time and the subsequent developments which have followed, this article rejects the objections to reservation for women and argues as to why reservation of seats in legislatures would facilitate women's empowerment. In conclusion, the author posits that the best solution is to enact the Bill and allow Parliament or the political parties to evolve the mechanism to distribute seats across the social and economic spectrum and end, once and for all, the perpetuating political procrastination on the proposal.

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I. INTRODUCTION: THE CONSTITUTIONAL DISPENSATION

A. *Our Present Discontents: Or How We Got Into Such a Messy Controversy?*

This article concerns the contemporary controversy over providing political reservations (special seats for women) in the Union Parliament and the State Legislatures. The proposal to induct this change into the Constitution was floated in the form of an amendment to the Constitution. Following, as it did, the Panchayat amendments, which permitted such reservations in the new third tier of government, such a proposal was not inconsistent with either parliamentary or constitutional thinking. The Panchayat amendments were a precedent. The question was whether the precedent of reserving seats for women in Panchayats should be imaginatively extended and enlarged on the wider canvas of elections to the State and Union legislatures?

Our present discontents arise out of the sequence of events culminating in December, 1996 when virtually all the political parties got cold feet and did a *volte-face* by withdrawing their enthusiastic support for the proposal to introduce reservations, aimed at ensuring a minimal one-third mandatory reservation for women in the State and Union legislatures. The reasons for this *volte-face* were both devious and complex. Electoral politics made the various political parties re-think whether such a proposal would bring electoral dividends. But both the deviousness as well as the complexity gave rise to a fresh debate. If men were induced to reflect on whether they want to be ruled by women, the latter had occasion to question whether they wanted to be the beneficiaries of a male-dominated politics.

If the initial proposal to make reservations sported the *joie de vivre* of being seen to do something to advance the cause of gender justice, the *volte-face* sent everyone back to the drawing board to consider the arguments of principle on which reservations for women could be founded. This *volte-face* paralysed the momentum towards obtaining any scheme of reservation for women in State Legislatures and the Union Parliament for many years to come.

The Indian Constitution is founded on the idea of universal suffrage without making any concessions for special representation on grounds of caste, colour, religion, and gender or group identity. This was a reversal of the policy followed by the predecessor British regime from 1892 (when the Indian Councils Act, 1892 was

passed) and just before independence in 1946 (when elections were held according to the Cabinet Mission Plan and in line with the Government of India Act, 1935). The British had followed a principle of communal electorates, which was introduced in 1909 under the Indian Councils Act, 1909, and was reflected in the convenient, albeit unwise, Lucknow Pact of 1916. The Montague Chelmsford Report of 1919 was unhappy with communal electorates - an unhappiness echoed by the Indian Statutory Commission (Simon Commission) which made it clear that "stereotyping existing relations constituted a very serious hindrance to the development of the self governing principle."¹ Despite this, communal electorates were accepted as a facet of British governance by Indian politicians and as the uneasy compromise method of getting out of awkward situations and resolving political demands. Though the Communal Award of 1932 was much criticised, it was clearly there to stay. This approach divided communities and entrenched identities in ways that led to the sub-division of the subcontinent.²

When the matter was mooted in the Constituent Assembly, Vallabhbhai Patel's proposal of joint, as opposed to separate, electorates on August 27, 1947 met with a murmur of discontent.³ Even though the Draft Constitution of 1948 did not deviate from the broad principle of a single electoral roll, the Drafting Committee proposed an amendment to enable this in a Draft Article moved on 16 June, 1949. By this time, the Assembly had already decided that the principle of communal reservations would be abolished. However, alongside the principles of universal suffrage, joint electorates, a single electoral roll and the abolition of communal electorates, the Constitution also countenanced special representation for the Untouchables and Tribals (known as the Scheduled Castes and Tribes or SC/ST, named after the enabling schedules through which they were identified) and also the Anglo Indians.⁴

The basis on which this dispensation was made was two-fold; the first was the principle of equity of empowerment, whereby it was felt that a mixture of discrimination and disadvantage would inevitably precipitate circumstances whereby this class of people would be denied the equity of political empowerment. A somewhat similar argument was made and accepted in the Mandal case⁵ for affirmative action for recruiting civil servants from vulnerable communities. The other backward classes (OBCs as they came to be called) were added to the SCs and

¹ INDIAN STATUTORY COMMISSION, REPORT OF THE INDIAN STATUTORY COMMISSION (SIMON COMMISSION REPORT VOLUME 1 149 (1930).

² For details of the constitutional background, see B. SHIVA RAO, THE FRAMING OF INDIA'S CONSTITUTION: A STUDY (N. M. Tripathi ed., 1968).

³ VI CONSTITUENT ASSEMBLY DEBATES 213 (1948).

⁴ INDIAN CONST. Article 330-334.

⁵ Indra Sawhney v. Union of India (1992) Supp. 3 S.C.C. 215.

STs for preferential treatment. If bureaucracy represented a facet of the power of the State, which had to be equitably distributed to include the disempowered and disadvantaged, such reasoning applied with even greater force to political representation in Parliament and the State Assemblies. The second basis on which special representation of the vulnerable was justified was that the interests of such groups could not be vouchsafed unless they looked after their own interests instead of abandoning their fate to majoritarian politics. But it was made clear that any political representation that was made for vulnerable groups would, in fact, be made for a time-bound period, which has been extended from time to time.

It was generally thought that other 'vulnerable' and 'not-vulnerable' groups would have to find solutions to their problems within mainstream politics. But what would happen if mainstream politics failed these other groups? If the principle of the failure of mainstream politics was a reason for providing the victims of such failure with special electoral representation, the entire edifice of universal suffrage and general electorates would come crashing down. Such a principle could only be extended to such 'vulnerable' groups where it was almost certain that they would never otherwise find political empowerment and ran an ongoing risk of continuous discrimination and disadvantage for years to come to ensure numerical representation. However, it was understood that under no circumstances would the case for communal representation be canvassed even if there was a failure of democratic representation of religious groups who were likely to be victims of endemic unfairness and injustice as a consequence of majoritarian pressures. (The term 'majoritarian' is used here in both senses to include numerical majorities as well as marginalised minorities by an application of the utilitarian principle of the greatest good of the greatest number.)

This takes us to the basis on which the case for reservation for women is argued. If we follow the principle of vulnerability, there are many classes of people who are vulnerable. Some women may be amongst the most vulnerable in Indian society. But this is not true of all women in all classes of society. However, it is arguable that 'women' as a class or group are generally less likely to be politically empowered than most other classes. It is around this premise that the case for reservation is founded other than the broad argument that the representation of women in Parliament will generally enrich the polity.

Empirically, there is ample evidence that women have not been represented in a manner and to the extent commensurate with their numbers. No less, although token legislation has been passed from time to time and various special programmes have been created to empower women and diminish their social disadvantage, there is a justified feeling that as the economy has expanded, the lot of ordinary women **has worsened, atrocities towards women have increased and their chances for a real**

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equality of opportunity and a fair share of distributive justice have diminished. Whilst the Constituent Assembly included women who played a significant role on many questions, the optimism that women (other than those whom Nehru's government favoured) would play a crucial role in tomorrow's governance was quite high. Such optimism suffers cynicism in our time. It is not enough that India has produced a woman Prime Minister, and several Chief Ministers, or that women (in various fields) have been successful artists, litterateurs or entrepreneurs. The realities of everyday life and continuance of sexist practice and politics remain.

But the reason for supporting any kind of case for affirmative action for women is not because there is an inter-generational duty to 'right' historic wrongs. If that principle is carried to its logical conclusion, there is no dearth of historical injustices that would need to be redressed. Thus the argument is not based on a sense of "compensatory discrimination" as such. There is no reason why an innocent generation should pay for the sins of their wicked ancestors. However, where there is an endemic continuance of past injustice in present times, a case for affirmative action would be made out to effect the social amelioration and social empowerment of those who suffer the present discontent of past practice. This does not necessarily resolve the complex questions related to providing political representation for women. Why only women? Whom amongst women? And if women, why not others? All this has to be perceived against the overall issue of whether special political representation should be formally given by way of a constitutional direction at all. Even the representation in Parliament for Scheduled Castes (SC) and Scheduled Tribes (ST) was originally to continue for only ten years - a period that has been opportunistically extended ten years at a time for sixty years. No doubt there is a need to explore other ways to secure political representation without entrenching their representation as a constitutional imperative.

I believe that even as an argument of constitutional principle, the case for special representation in the State Assemblies and Parliament can be supported. No doubt, various leading feminists have urged that empowerment through social and political struggle is more consistent with making more reliable strides for the future and the self-esteem of women in a society which liberates women according to notions invented by men. Whilst the resistance to what seems like a constitutional handout is understandable, there is enough evidence to argue a case for electoral representation for women for an interim period, say renewable every fifteen years. Such an initiative may change the face of Indian politics. That, by itself, may not be a bad thing.

B. A Preview of the Case for Representation for Women

On the midnight of 14-15 August, 1947, India made a 'tryst with destiny', a promise to its teeming millions, of equality and a life enriched by human rights, peace, progress and prosperity. Yet even after the 50th anniversary of India's

independence, this promise stands belied. The entire social and political scenario is beset with inequality - between urban and rural areas, rich and poor, educated and uneducated, upper castes and lower castes, and between men and women. A wide gap exists between the declarations in the Constitution and the social legislation designed for them on the one hand, and the actual social status of women on the other.

C. Present Constitutional Framework: The Indian Parliament and Its Wisdom

The Constituent Assembly explicated its concern for equal rights for women. Apart from the general equality clause [Article 14], there were specific provisions bringing discrimination on grounds of sex within the scope of constitutional prohibition [Articles 15(1), 15(2) and 16(2)]. More affirmatively, the Constitution decreed that special provisions could be made for women and children [Article 15(3)]. The Directive Principles of State Policy sought to ensure that "men and women, equally, have the right to an adequate means of livelihood" [Article 39(a)]. There was a special provision for maternity relief [Article 42]. There were also general provisions of socio-economic justice which did not specifically target women but which would benefit them as a part of amelioration of the common weal [Articles 39-47]. During the Constituent Assembly discussions, despite sharp opposition from various members, the new draft of the equality provisions were reworked by the Advisory Committee on 21-22 April, 1947 to ensure: "Provided nothing in this clause shall prevent separate provisions being made for women and children."⁶

Eventually, the affirmative action clause for women - the present Article 15(3) - surfaced in the Draft Constitution of October, 1947. Oddly - but understandably - there was also concern about the predicament of women during the discussion on religious freedoms. In a sharply written letter of 31 March, 1947, Rajkumari Amrit Kaur (on behalf of herself and Hansa Mehta) expressed the concern that future legislation to eradicate religious practices invidious for women might be stultified by the religious freedoms provisions.⁷ This led to a minor enlargement of the social reform clause to include not just religious worship but also religious practices [now Article 25(2)(a)]. This then was the formal constitutional package. But the Hindu Code Bill was being deliberated. There was a sense of excitement in the air. It was expected that the Legislature would pass many statutes for preventing abuse and discrimination against women and to advance their cause.

The issue of reforming personal laws was on the constitutional agenda and one of the objectives of the Constitution was to achieve a Uniform Civil Code [Article

⁶ FRAMING OF INDIA'S CONSTITUTION: A STUDY 185 (Shiva Rao ed., 1968); FRAMING OF INDIA'S CONSTITUTION: VOLUME II 221, 253, 254, 296 (Shiva Rao ed., 1968).

⁷ FRAMING OF INDIA'S CONSTITUTION: A STUDY 260 (Shiva Rao ed., 1968).

44]. The legislative efforts in personal law were however mired in the Uniform Civil Code controversy.⁸ Generally, the Government's own report "Towards Equality" does not speak too powerfully of the success of programmes to protect women achieving success. Women thus have a just grievance that beyond enacting legislations, the cause of women for gender justice has been neglected.

Perhaps one reason for this failure lies in the fact that the 'cause' of women was placed in the hands of men, a male-dominated society, and the male point of view in political and administrative circles. Lack of empowerment has resulted in women becoming the object rather than the subject of gender justice. One step in the right direction was to give women mandatory constitutional representation in rural [Article 243D] and urban [Article 243T] local governments. This was a step forward. To some extent, women are being empowered. At the same time, their power is being manipulated and opposed by social forces, strongly and sometimes viciously. The second part of the Constitutional package is the creation of a National Commission for Women as a statutory body. Its reports show incomplete and not always satisfactory interventions. Thirdly, while there has been a considerable mobilisation of women through special publications (for example, *Manushi*), specialised NGOs (for instance, the Lawyers Collective work on Domestic Violence), and special efforts (including the drafting of the law on sexual harassment), some feel this may have gone too far.⁹

But all this does go to show that women, when placed in positions and places of empowerment, become more significant actors to pursue their own cause and gender justice. This is not without relevance to our present concerns about the political empowerment of women. In the democratic set-up that India adopted under the new constitutional framework, equal 'partnership between men and women'¹⁰ was envisaged in all fields - social, economic and political. This is to be found in the proclamations of equality enshrined in the Constitution.¹¹ However, these legal declarations have not been translated into social reality as part of the social fabric of India. Women have made some gains in the economic field in terms of opportunities of employment. There is gradual acceptance of the important economic role that women play in society. Although there is an improvement in their social status, women continue to play only a marginal role when it comes to decision-making in the family, society and politics. Women enjoy a mere peripheral existence in the political life of the country. Former Prime Minister Deve Gowda gave expression to

⁸ See ARCHANA PARASHAR, *WOMEN AND FAMILY LAW REFORM IN INDIA* (1992).

⁹ See KUSUM, *HARASSED HUSBANDS* (2003).

¹⁰ Inter-Parliamentary Conference, *Towards Partnership between Men and Women in Politics*, (15-19 February 1997).

¹¹ See INDIAN CONST., PREAMBLE; See also INDIAN CONST., Articles 14-18.

this, when he said: "While we have recognised the power of women's votes in the making and unmaking of governments, we have not fully benefited from their voice in decision-making bodies like Parliament and State Legislatures. I find this is so all over the world. This needs to be changed."¹²

Women comprise nearly half the population of the country but they enjoy a low political status. For a meaningful study it is important to take a look at the context. The population of males and females according to census reports over the decades is as follows:

TABLE 1: SHOWING THE SEX RATIO OF WOMEN PER 1000 OF THE MALE POPULATION

CENSUS YEAR	SEX RATIO
1901	972
1911	964
1921	955
1931	950
1941	945
1951	946
1961	941
1971	930
1981	934
1991	927
2001	933

Source: Census of India, 1991 Final Population Totals, Series 1, Paper-2 of 1992 and Census of India, 2001.

There is a declining sex-ratio in the country, though in most other countries of the world such a ratio favours the women especially because of the lower mortality rate of girl children in those countries. Further, this is not uniform across the length

¹² Stated by Prime Minister, Deve Gowda while addressing the concluding session of the five-day Inter-Parliamentary Union Conference (unpublished). It is ironic that the Prime Minister, on the one hand, made such a statement and even referred to the Reservation Bill, and on the other hand, made little effort in seeing it through.

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and breadth of India - with Kerala having the most female favourable sex ratio and others like Delhi, Sikkim, Haryana and Punjab having lower sex ratios.

Certain other factors, which are relevant, include indicators like the literacy rate. The following table shows how women fare against men in terms of literacy.

TABLE 2: SHOWING THE LITERACY RATE IN INDIA

STATE/UNION TERRITORY	MALES	FEMALES	MALES	FEMALES
	2001		1991	
NATIONAL	75.3	53.7	64.20	39.19
JAMMU & KASHMIR	66.6	43.0	N.A.	N.A.
HIMACHAL PRADESH	85.3	67.4	69.10	40.47
PUNJAB	75.2	63.4	65.66	50.41
CHANDIGARH	86.1	76.5	82.04	72.34
UTTARANCHAL	83.3	59.6	-	-
HARYANA	78.5	55.7	69.10	40.47
DELHI	87.3	74.7	82.01	66.99
RAJASTHAN	75.7	43.9	54.99	20.44
UTTAR PRADESH	68.8	42.2	55.73	25.31
BIHAR	59.7	33.1	52.49	22.89
SIKKIM	76.0	60.4	65.74	46.69
ARUNACHAL PRADESH	63.8	43.5	51.45	29.69
NAGALAND	71.2	61.5	67.62	54.75
MANIPUR	80.3	60.5	71.63	47.60
MIZORAM	90.7	86.7	85.61	78.60
TRIPURA	81.0	64.9	70.58	49.65
MEGHALAYA	65.4	59.6	53.12	44.85
ASSAM	71.3	54.6	N.A.	N.A.
WEST BENGAL	77.0	59.6	67.81	46.56
JHARKHAND	67.3	38.9	-	-
ORISSA	75.3	50.5	63.09	34.68
CHATTISGARH	77.4	51.9	-	-

MADHYA PRADESH	76.1	50.3	58.42	28.85
GUJARAT	79.7	57.8	73.13	48.64
DAMAN & DIU	86.8	65.6	82.66	26.98
DADRA & NAGAR HAVELI	71.2	40.2	53.56	26.98
MAHARASHTRA	86.0	67.0	76.56	52.32
ANDHRA PRADESH	70.3	50.4	55.13	32.72
KARNATAKA	76.1	56.9	67.26	44.34
GOA	88.4	75.4	83.64	67.09
LAKSHADWEEP	92.5	80.5	90.18	72.89
KERALA	94.2	87.7	93.62	86.13
TAMIL NADU	82.4	64.44	73.75	51.33
PONDICHERRY	88.6	73.9	83.68	65.63
ANDAMAN & NICOBAR ISLANDS	86.3	75.2	78.99	65.46

Source: Census of India, 1991 and Census of India, 2001.

The literacy levels of women continue to remain low which is reflective of, and one of the prime causes of, perpetuation of the lower social position of women. However, according to various studies,¹³ the literacy rates do not appear to have any direct correlation with the political representation of the women in the country. Kerala enjoys the highest female literacy rate at 86% and the social set-up is also highly conducive to active political participation of women. But the representation of women in the State Legislature or political parties is somewhat limited. At the other end is the case of Rajasthan where the literacy rate is extremely low at 20%. There is some correlation between literacy and the political representation of women. The percentage of women in the Kerala Legislative Assembly rose from less than 1% in 1967 to 6% in 1991, while in Rajasthan it increased from 4% to 8%.

Most pertinent to our present concern is the table showing the number of seats and percentage of women members in the Lok Sabha over the years:

¹³ *A Status Report on Participation of Women in Panchayati Raj*, INSTITUTE OF SOCIAL SCIENCES, NEW DELHI (1995).

TABLE 3: SHOWING SEATS AND PERCENTAGE OF WOMEN IN THE LOK SABHA

YEAR	TOTAL SEATS	WOMEN MEMBERS	PERCENTAGE OF WOMEN OF WOMEN MEMBERS TO TOTAL SEATS
1952	499	22	4.4
1957	500	27	5.4
1962	503	34	6.7
1967	523	31	5.9
1971	521	22	4.2
1977	544	19	3.4
1980	544	28	5.1
1984	544	44	8.1
1989	517	27	5.2
1991	544	39	7.4
1996	543	40	7.18
1998		43	7.9

Source: Lok Sabha website (www.loksabha.nic.in)

The Table shows that the representation of women in successive Lok Sabhas has remained disproportionately low, reaching a peak of only 44 in the 8th Lok Sabha, (i.e. 8.1%), but never exceeding 10%. In the run-up to elections to the Eleventh Lok Sabha, reservation was a catchy slogan for most political parties as a means to harness the votes of the women voters. Some of them provided for this expressly in their manifestoes.¹⁴ The main political rivals, the BJP and the Congress, even announced that they would give 30% reservation to women in the tickets allotted by

¹⁴ Such as Congress (I) in its manifesto in the section titled "Special Measures for Excluded Sections of our Society" provides:

(iii) Extend the reservations for certain excluded categories in deserving cases, such as Dalit Christian and for Women in Vidhan Sabhas and the Lok Sabha.

The Janata Dal provides that "the reservation of 30% elective posts in local bodies for women has to be extended to Union and State Legislatures"; the CPM (another constituent of the UF Government) provides in its manifesto that "one-third of the seats in legislatures and parliament be reserved for women", while the AICC (Tiwari) makes it clear in its manifesto that the party is committed to "provide 33% reservation to women in all public offices in the Panchayat to Parliament."

them. The Common Minimum Programme of the United Front government projected the issue of reservation of seats for women as one of its agenda items. Its section entitled 'Social Justice' commences with the declaration that one-third of the elected membership in Parliament and State Legislatures will be reserved for women. Legislation, including an amendment to the Constitution, if necessary, will be introduced to reserve one-third of all posts in government for women.

It also contained other items such as the review of laws to identify discriminatory provisions with a view to eliminate them from the statute book. However, these promises proved to be an eye-wash. In Madhya Pradesh, where there were close to 1300 candidates in the fray for 40 seats, only 11 women candidates had been fielded by the three main parties. 2 of the women members were given tickets under dubious circumstances, that is to accommodate a family member of a scam-tainted politician who himself could not be given the ticket; and another ticket was given to Phoolan Devi on the basis of her reputation as a former 'Bandit Queen'. The Janata Dal, which is the largest component of the then ruling coalition, nominated only 10 women out of the 270 seats contested by it in the elections to the Lok Sabha and only 3 out of these 10 women won. In that election the BJP gave tickets to only 23 women out of 477 seats it contested and 13 of them won. Thus, contrary to proclamations and pronouncements made by one and all, the parties preferred to give seats only to those women candidates considered safe by them, or where they were compelled to make at least a pretence of fielding women candidates from seats where the party had no hope whatsoever of winning.

Of the total women candidates fielded, only 36 succeeded at the hustings, constituting a mere 6.6% of the total membership of the Lok Sabha. Alka Nath resigned her Lok Sabha seat to make way for her husband, Kamal Nath to contest the elections, which he subsequently lost.

A similar situation prevails in the case of State Legislatures, which is made clearer by the table showing the representation of women and men in some State Legislatures.

TABLE 4: SHOWING REPRESENTATION OF WOMEN AND MEN IN STATE LEGISLATURES

STATES/UTs	YEAR	TOTAL	WOMEN	YEAR	TOTAL	WOMEN
ANDHRA PRADESH	1957	252	11	1994	294	09
KARNATAKA	1957	179	18	1994	224	07
KERALA	1957	127	06	1991	140	08
MADHYA PRADESH	1957	218	26	1993	320	12

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PUNJAB	1957	101	05	1992	117	06
RAJASTHAN	1957	136	09	1994	200	09
TRIPURA	1957	30	00	1992	60	02
UTTAR PRADESH	1957	341	24	1993	425	12
WEST BENGAL	1957	195	11	1991	294	18
DELHI	1972	56	03	1993	70	03

Source: A Status Report on Participation of Women in Panchayati Raj Institute of Social Sciences, New Delhi 1995.

In the elections to the Uttar Pradesh Assembly in 1955-6, the BJP gave only 25 tickets to women candidates out of a list of 416 candidates. Though the political participation of women in terms of exercise of their voting power has increased over the years, their representation in the national and state legislatures has wavered but has continuously remained abysmally low.

Not only is the number of elected women candidates extremely low, the number of women candidates fielded also remains extremely low. A look at the position that prevails in the other countries of the world reveals that the position of women in the decision-making fora is no better, except in certain Scandinavian countries and the erstwhile USSR. Women had to wage long struggles to secure their political enfranchisement, which became possible only in this century. In that regard, the Indian Constitution ensured that there would be no discrimination on the basis of sex - in terms of voting rights or the right to contest and get elected to representative institutions. According to the data compiled by the Inter-Parliamentary Union on the basis of information provided by National Parliaments, as on 31 July 2007, the world average of women in parliament, both houses combined, is 17.5%, whereas the world average of women in the single house/lower house is 17.7%, and in the upper house/senate is 16.6%. The percentages do not take into account the case of parliaments for which no data was available on that date.

TABLE 5: SHOWING THE REGIONAL AVERAGES OF WOMEN IN NATIONAL PARLIAMENTS

NAME OF COUNTRIES	SINGLE HOUSE/LOWER HOUSE	UPPER HOUSE/SENATE	BOTH HOUSES COMBINED
NORDIC COUNTRIES	41.6%	-	41.6%
EUROPE - OSCE MEMBER COUNTRIES	20.4%	17.7%	19.8%

(INCLUDING NORDIC COUNTRIES)			
AMERICAS	20.0%	19.4%	19.9%
EUROPE - OSCE MEMBER COUNTRIES (EXCLUDING NORDIC COUNTRIES)	18.3%	17.7%	18.2%
SUB-SAHARAN AFRICA	17.8%	18.5%	17.9%
ASIA	16.6%	16.6%	16.6%
PACIFIC	14.6%	31.8%	16.7%
ARAB STATES	9.6%	6.3%	9.0%

Source: The Inter-Parliamentary Union (www.ipu.org)

The above table indicates that the percentage of women in national parliaments is the highest in Nordic countries. It appears that in the Nordic countries, the introduction of quotas was preceded by the *de facto* presence of women in legislatures. Women politicians then used this new power to introduce quotas in their respective political parties. It is important to note that the law in the Nordic countries never introduced quotas. These quotas were a result of internal party decisions. It has taken 80 years for the Nordic countries to reach where they are, and it is not quotas that are singularly responsible.¹⁵

Apart from their lesser influence in the legislatures, a look at the position of women within political parties is a pointer to one of the root causes of the problem of the unequal share of women in the power structure. According to the IPU survey, in India in 1995, the BJP, which has amended the party Constitution to include 2 women in every committee, has only 8 women in the BJP Working Committee comprising 75 members and only 150 women in the 650 member National Council, while there are just 2 women in the Election Committee consisting of 17 members. In 1995, the Congress (I) had only 2 women in its 20 member Working Committee, and women found no place in important committees like the Manifesto Committee and the Ticket Distribution Committee. In the Lok Sabha election of 1995, the party allotted 43 tickets to women candidates out of the 530 seats contested by it. The Left also cannot boast of having given a fair deal to the women. In 1995, the CPI had only 12 women in its National Council and only 3 in the National Executive of 21 members. It gave 4 out of 43 seats contested by it to women candidates. The CPM had 5 women in its 70

¹⁵ Drude Dahlerup, *Quotas are Changing the History of Women*, available at <http://www.quotaproject.org/papers_SU.htm> (last visited 19th December, 2007).

member central committee and gave 5 out of 72 seats to women. These figures are particularly relevant to refute arguments that the answer to greater representation of women lies in making it mandatory for parties to allocate a certain percentage of seats to women rather than reserving seats in legislatures.

II. FACTORS CONTRIBUTING TO THE LOW POLITICAL REPRESENTATION OF WOMEN

A study of the factors that cause women to suffer an inferior political status and enjoy only a marginalised political existence would not be out of place. There is no single root cause but a range of factors for such a state of affairs. Among these are the unequal power relations between the sexes, the patriarchal system based upon the inherent belief in male superiority which expounds and perpetuates male domination by vesting the decision-making power in the eldest male member of the family, the view that the woman's place is inside the house and the man is the bread earner of the family, all of which have led to the lack of social and economic independence to women.

The lack of economic independence becomes particularly important when the question of funding poll campaigns arises. In our present times, the poll campaigns are not confined to door to door canvassing by candidates in 'manageable' constituencies. The constituencies extend over large areas, enveloping lakhs of people and involving the participation of the entire party set-up and the media and the press alike. Elections evoke fierce competition with muscle power playing an equally important role. All this requires money, much of which does not come from the party but has to be generated from private sources - all the more so for independent candidates who do not have the support of the party apparatus behind them. Thus, men who have traditionally controlled economic power are in a better position to fight elections compared to women. The parties are also apprehensive about giving tickets to women candidates because of additional party funds that would have to be pumped into the campaign. An expression to anguish over this is found in the words of Girija Vyas:

Women get left out at the very first stage of selecting candidates on the pretext that they are not equipped to contest elections with money power and muscle power having become essential ingredients in the recipe of electoral success.¹⁶

¹⁶ *All-party Meet Soon on Quota for Women in Parliament*, THE HINDU, Aug. 13, 1996.

A plea often taken by the parties to explain the lower number of contesting women candidates is that enough 'winning' women candidates are not available. This presents a skewed picture. Clearly, enough opportunities are not made available for women candidates, which together with the other factors ensures that women are 'defeated' at the first stage of the process of selection - that of allocation of tickets to contest the elections. Most political parties do not field women candidates and present the excuse that woman candidates are less likely to win.

Active political participation entails constant interaction with other colleagues. In an orthodox society, intermingling of sexes is frowned upon and has the effect of jeopardising a woman's reputation. The label of a 'loose woman' is clamped all too readily on her - more so if she is married. To escape such a predicament, women refrain from political activity and those who do venture into politics often beat a hasty retreat. Equally, women are enmeshed in domestic and family responsibilities. Looking after the family is invariably a full time job and not one that permits time for political involvement and the pursuit of political ambitions. Another disturbing feature is that the staying power of women in politics is limited. It depends on their ability to win elections. The moment they lose, their political careers fade away because they are individually held responsible for their defeat and subjected to ridicule for having lost. A glaring example is of Congress leader Sarla Mishra who allegedly committed suicide, being depressed over her "rudderless" political life.

A major factor that keeps women out of politics is the nature of politics in India. The government, bureaucracy and the entire political system have been corroded by corruption at all levels. A strong indictment of the system of governance is to be found in the Vohra Committee Report, according to which the mafia is running a parallel government in the country.¹⁷ Though there is no dearth of 'Jayalalithas' in the country, yet the domination of politics by criminals has ensured that women are alienated from the political process except during the periodic ritual of casting votes at the time of elections.

Unfortunately, even the women who have come to power have done precious little to ameliorate the condition of women or to bring them into the mainstream of the political life of the nation. The regime of Indira Gandhi saw no positive steps being taken in this direction, leaving it to the women themselves to struggle for their empowerment.

Thus, a variety of factors have combined to ensure that while the economic role of women is increasingly being recognised and emphasised, their political role is being down played and relegated to the backburner.

¹⁷ MINISTRY OF HOME AFFAIRS, GOVERNMENT OF INDIA, VOHRA COMMITTEE REPORT (1995).

III. THE BILL OF 1996: DISCONTENTS (1995-1997)

A. Developments before the Bill of 1996

Various initiatives have been taken at different levels, special laws have been enacted and specific schemes and projects have been undertaken for the benefit of women to provide special protection and benefits to, and for, women. The latest step in this direction is the attempt to reserve seats for women in the elected houses of the Union and State legislatures. This follows the reservation of one-third seats in the three-tier Panchayat institutions and municipalities set up in rural and urban, areas respectively under the 73rd and 74th Amendments to the Constitution. The introduction of an entrenched system of local government in the Constitution was part of an effort to provide a constitutional basis for local institutions in order to strengthen democracy at the grassroots level. It marks a significant move towards the de-centralisation of the federal polity in the face of the continuous erosion of the federal structure in the country by a greater centralisation of power in the Union.

Reservation of seats in the legislature has always been a controversial issue. The Preamble, reflecting the ideals enshrined in the Constitution, recognises equality as an important tenet of the Constitution which further provides for the right to equality in the fundamental rights chapter of the Constitution. After the Supreme Court's decision in the Mandal case,¹⁸ reservations no longer constitute an exception to the concept of equality. They are now regarded as a legitimate constitutional tool to make equality more meaningful for those who are disadvantaged and discriminated against. The communities and groups, which have historically suffered discrimination, disadvantage and disempowerment, were given certain preferential treatment. This took three forms: special electoral representation in legislative bodies (preferential electoral representation), special recruitment in public services (preferential employment) and special schemes in areas such as welfare and education (preferential treatment).¹⁹

Special electoral representation for disadvantaged groups is one of the special features of the Indian Constitution, which, despite rejecting separate electorates, as they existed in British India was not averse to special electoral representation for some groups. A general electoral roll was provided for,²⁰ but seats were reserved for Scheduled Castes and Scheduled Tribes.²¹ Besides this, it was explicitly provided

¹⁸ *Supra* note 5.

¹⁹ Rajeev Dhavan, *The Supreme Court as Problem Solver: The Mandal Controversy* (PILSARC, Working Paper No. 109).

²⁰ INDIAN CONST., Article 325.

²¹ INDIAN CONST., Article 330 and 332.

that the President could appoint two members of the Anglo-Indian community to the Lok Sabha if, in the opinion of the President, that community was not adequately represented in the Parliament.²² A similar provision was made for the State Legislatures.²³ Meant initially for a transitional period of 10 years, these provisions have been extended decennially from time to time,²⁴ and are now regarded by many as a political gimmick and a populist measure to develop vote banks. Even so, reservations play an important role in ensuring equality for all. Over the years reservations have been extended to the Other Backward Classes with regard to jobs in Government services and educational opportunities. This has been enabled by Articles 15 and 16 of the Constitution, as interpreted by the Supreme Court in the famous Mandal Case.²⁵

We have seen that the Constitution also has a special provision pertaining to women and children. Article 15(3) of the Constitution states:

Nothing in this Article (15) shall prevent the State from making any special provision for women and children.

The introduction of the Constitution (Eighty-First Amendment) Bill, 1996 to provide an entrenched constitutional mandate for reservation of seats for women in the legislatures appears to be a logical corollary to the process of reservation in decision-making bodies for women initiated by reservation in Panchayats by the Ramakrishna Hegde government of Karnataka in 1983. It provided 25% reservation for women at village Panchayat levels in Karnataka. The lead taken by Karnataka was followed by Maharashtra. This inspired the move to reserve seats for women in panchayats and municipalities under the 73rd and 74th Amendments to the Constitution. The specific provisions introduced by the amendments were to ensure:

1. that all Panchayats reserve 33% of seats for women - including 33% of the SC and ST seats [Article 243 D (2) and (3)] and
2. one-third of the offices of Chairperson shall be for women by rotation [Article 243 D (4)].

²² INDIAN CONST., Article 331.

²³ INDIAN CONST., Article 333.

²⁴ This has been done by successive Amendments to the Constitution: the original "ten years" was substituted by "twenty years" by the Constitution (Eighth Amendment) Act, 1959; by "thirty years" by the Constitution (Twenty third Amendment) Act, 1969; by "forty years" by the Constitution (Forty-fifth Amendment) Act, 1980, and by "fifty years" by the Constitution (Sixty second Amendment) Act, 1989.

²⁵ *Supra* note 5.

Similar provisions were made for municipalities [Article 243 T (2) and (3)] on the 33% reservation; and sub-section 4 on the chairpersonship. The results of these experiments have been uneven and there has been angst and hostility towards women being chairpersons and who have, in some cases, not been allowed to function.

The provisions in the Bills that introduced reservation for women in Panchayats and Municipalities received unanimous support and accolades from members of Parliament cutting across party lines and even from those opposed to the Bills on other grounds. The Bills were seen as a means to bring about "awakening" among women,²⁶ to provide a training ground,²⁷ a nursery, "a significant innovation",²⁸ and as "essential to ameliorating in a small way the injustice done to women for quite a few centuries".²⁹ In fact, during the debates over the two Bills, members like Kamala Sinha expressed the desire of extending similar provisions to assemblies and the Parliament. Welcoming the proposed reservation, she said:

[T]hese reservations will give an opportunity to women to function as elected representatives. They will know how to function in public life, how to solve the problems and how to face difficult situations. This will be a good ground for them to be prepared for a greater political role which ultimately they will play.³⁰

The move to reserve seats for women in the Panchayati Raj institutions and municipalities was welcomed by all. It may well alter the basis of local empowerment in India, with nearly one million women having entered the fray for elections to local bodies in 1995. Apprehensions are expressed that women may be mere puppets in the hands of the male-dominated forces and play to their tune, yet these initiatives mark a beginning.

In stark contrast to this, the Constitution (Eighty-First Amendment) Bill to reserve seats for women in legislatures ran into rough weather amidst much opposition and heartburn. Despite near unanimous commitment to the passage of the Bill amongst the political parties, last minute hectic political activity and 'chickening out' in face of stiff opposition from male members stymied the passage of the Bill in the 1996 monsoon and the winter sessions of Parliament. The posture

²⁶ 165 RAJYA SABHA DEBATES. col. 129 (Dec. 23 1992).

²⁷ 165 RAJYA SABHA DEBATES. col. 110 (Dec. 23 1992).

²⁸ An expression used by the Minister of State in the Ministry of Rural Development (Department of Rural Development), Shri G. Venkatswamy while moving the 72nd Constitutional Amendment Bill in the Lok Sabha. See 165 LOK SABHA DEBATES col. 717 (Dec. 1, 1992).

²⁹ *Supra* note 15.

³⁰ *Supra* note 15.

adopted by the United Front Government has given rise to apprehensions that the Bill may have been relegated to the record books and will see the light of the day only after a drastic watering down of its contents.

The idea of women's reservation in elected democratic institutions first took root after Rajiv Gandhi's government introduced a Constitution Amendment Bill to provide reservation for women in Panchayats, but even that bill was shot down by efforts of a combined opposition who referred to it as a political gimmick. Over the years, parties have realised the importance of women as vote banks and sought to provide sops for them. The issue of reservation has engaged the attention of the parties since it is a measure that directly affects them, and thus, would influence the political leanings of the women. This has taken myriad forms, with some parties promising quotas for women in the allocation of tickets while others support the reservation of seats for women in legislatures. A resolution was adopted by the preceding Tenth Lok Sabha to bring a bill providing for representation to women in the Lok Sabha and the State Legislative Assemblies. The UF Government recognised and avowed to provide reservation in its Common Minimum Programme - a statement of the goals it wanted to achieve during its tenure.

Having once made the promise, the government sought to backtrack. Only the fear of the consequences of deviating from his promise, of introducing the necessary bill in the Parliament in the wake of unprecedented unanimity among women members cutting across party lines, compelled former Prime Minister Deve Gowda to himself pilot the requisite Constitution Amendment Bill to amend the constitution to enable reservation of seats for women in legislatures possible. The move was accompanied by high drama and the suspension of the question hour by the Speaker to enable this "historic" measure to be introduced.³¹ Efforts to get the Bill passed the same day were, however, defeated - with the promise that it would be passed the next day in the light of the near unanimity over the need to pass the Bill immediately. The next day, which was the last day of the Budget Session, saw attempts to thwart the passage of the Bill. Trivial issues were raised to scuttle the Bill. Overnight, the unanimity that greeted the Bill seemed to have disappeared, to be eclipsed by vested concerns of male members manifesting itself in empty benches in the house. Even the treasury benches were nearly empty when the discussion on the Bill was taken up. The end result was that the Bill was referred to the Joint Select Committee amidst further drama and a walkout by women MPs.

The entire exercise showed up the UF Government in bad light. What emerged was the lack of will and motivation which led to the Bill being introduced only on the second last day of the Parliamentary session, perhaps to save face in view of the

³¹ *Women's Quota Bill Awaits Passage Today*, THE HINDU, Sept. 13, 1996.

promises made by it in its Common Minimum Programme and the pressure from women members of the coalition. It illustrates the lack of the Government's concern for democratic processes. The Government brought forward the Bill without prior discussion on it with other political parties (which would have obviated many controversies), and then attempted to have it passed without adequate opportunities to members to express their views on it. It showed a lack of sense of responsibility on the part of the government - first in trying to push through a badly drafted piece of legislation and then in failing to ensure the presence of its own members to support its initiatives on the floor of the House. All this points to a lack of significance of women's issues on the agenda of the political parties - visible in the attitude towards the Bill as well as the failure of the parties such as the Congress (I) to take action against the errant members who defied the whip issued by the party.

B. The Provisions of the Bill

The Bill itself has 4 clauses with Clause (3) replicating what Clause (2) has to say except that it provides for reservation of seats for women in the Legislative Assembly of every State. Clauses (2) and (3) are as follows:

Clause 2. After Article 330 of the Constitution, the following Article shall be inserted namely:

330A- (1) Seats shall be reserved for women in the House of the People.

(2) Not less than one-third of the total number of seats reserved under clause (2) of article 330 shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes:

Provided that nothing in this clause shall apply in relation to a State or Union territory so long as the number of seats reserved for Scheduled Castes or Scheduled Tribes, as the case may be, in that State or Union territory, is less than three.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election to the House of the People in a State or Union Territory shall be reserved for women and such seats may be allotted by rotation to different constituencies in that State or Union territory:

Provided that nothing in this clause shall apply in relation to a State or Union territory so long as the number of seats allotted to such State or Union territory is less than three.

Clause 3. After article 332 of the Constitution, the following article shall be inserted namely:

332A - (1) Seats shall be reserved for women in the Legislative Assembly of every State.

(2) Not less than one-third of the total number of seats reserved under clause (3) of article 332 shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes:

Provided that nothing in this clause shall apply in relation to a State so long as the number of seats reserved for Scheduled Castes and Scheduled Tribes, as the case may be, in that State, is less than three.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in the Legislative Assembly of every State shall be reserved for women and such seats may be allotted by rotation to different constituencies in that State:

Provided that nothing in this clause shall apply in relation to a State so long as the number of seats allotted to such State is less than three.

At the same time Clause (4) made it clear that

Clause 4. The Amendments made to the Constitution, by this Act, shall not affect any representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the House or the Assembly, as the case may be, in existence at the commencement of this Act.

That the lead taken in reserving seats for women in Panchayat and Municipalities was being followed is made expressly clear by the Statement of Objects and Reasons accompanying the said Bill, which in paragraph 2 states:

[H]aving provided reservation for women in Panchayats and Municipalities, it is now proposed to provide reservation for women on the same lines in the House of the People and in the Legislative Assemblies of the States by amending the Constitution. The major political parties are in favour of making such reservation for women.

A comparison between the earlier articles added to the Constitution by the 73rd and 74th Amendments and the amendments presently suggested shows that they are similar. Besides providing for reservation of one-third seats for women in the House of the People (Lok Sabha) and Legislative Assemblies (Vidhan Sabhas), the provisions as regards reserving one-third seats for women belonging to the SC and the ST had also been repeated. The Bill was condemned as poorly drafted, inadequate and meaningless. Even vociferous supporters of the Bill conceded its weaknesses and shortcomings.

C. Recommendations of the Joint Select Committee

The Joint Select Committee set up to evolve a consensus on the vexed issues raised during the short time that the Bill was debated was headed by a CPI Member of Parliament, Mrs. Geeta Mukherjee. It comprised 20 members from the Lok Sabha and 10 members from the Rajya Sabha, having 13 women members out of 30 (besides a woman as the chairperson) - a representation of nearly 43%. Significantly, the Committee included several women MPs who had campaigned actively in favour of such reservations. The Committee began its deliberations on 23 October, 1996. In the Joint Select Committee, the main discussions centred on two issues - the issue of extension of reservations to Rajya Sabha and the issue of extension of reservations to the OBCs. Ultimately, the Committee recommended the passage of the Bill in its present form though suggesting reservation for OBCs in the future "at an appropriate time". The recommendations were, however, accompanied by 4 dissent notes - by Jayant Malhotra (Independent) who expressed his opposition to the Bill and favoured reservation at the ticket distribution stage, by Hannan Mollah (CPIM) and Chandra Kala Pandey who opposed reservation for OBCs, by Ram Kirpal Yadav (3D) and Mukhtar Anis who submitted a joint dissent note insisting on reservations for OBCs, and by Nitish Kumar (Samata) and P. N. Siva (DMK) who laid stress on the OBC reservation as a pre-condition.

Amongst its other suggestions, the Committee recommended:

- (a) Review of the provision after 15 years from the date of the commencement of the Act, thus recognising that such reservation ought only to be a transient measure;
- (b) Substituting the words "not less than one-third" by "as nearly as may be, one-third", since it felt that the former set of words is "vague" and "liable to be interpreted differently" and as conferring power "to make reservations which may far exceed the limit of one-third";
- (c) The extension of reservation to the Rajya Sabha and the Legislative Councils (but it left the modalities to be worked out by the Government);
- (d) Measures for extending the benefit of reservation of seats for women belonging to the SC/ST in States where less than three seats were reserved in Lok Sabha (the Bill denies reservation for women where there are less than three seats reserved for SC or ST), suggesting that in case of two members being sent to Lok Sabha in the first term one seat could be reserved for women, in the second term the second seat could be reserved for women and in the third term both the seats could be treated as "general" or unreserved. In case of States or Union Territories where there is only one seat, the Committee recommended that the

seat in the first term shall be reserved for women while in the second and third terms it shall be treated as general. The Report observes: "By rotation of seats in this way, over a period of three terms, one-third seats for women can be ensured even in a State or Union Territory which has only one or two seats in the House of People;

- (e) Appropriate amendments to the Bill to extend the benefit of reservation to women in those States and Union Territories to which the number of seats allotted in the Lok Sabha is less than three, viewing such a move as "unjustified",³² and having the effect of denying the benefit of the amendment to the women in those States and Union Territories;
- (f) The principle of rotation should apply to the members nominated from the Anglo-Indian community so as ensure that one of the members nominated from that community 'shall' be a woman;
- (g) Appropriate amendments to be made to bring Union Territories, namely the National Capital Territory of Delhi and Union Territory of Pondicherry - each of which has a Legislative Assembly - within the purview of the provisions of the enactment;
- (h) Omission of the proviso to sub-clause (3) of Article 332A which provides that no reservation of seats for women shall be made in the Legislative Assembly of a State so long as the number of seats allotted to such State is less than three, since "no such State exists with an allotted number of seats less than three".

These recommendations no doubt merited consideration but, in fact, provided the much-needed excuse that the Government was looking for to deny its obligation to ensure the immediate passage of the Bill. The Report of the Joint Select Committee was tabled in both Houses of Parliament on December 9, 1996 with women MPs, cutting across party lines, supported by many of their male colleagues, standing up to demand its immediate passage. However, the Bill could not be taken up for consideration during the winter session of the Parliament. The Business Advisory Committee failed to set a specific date for the Bill to be taken up. The Union Parliamentary Affairs Minister, Srikant Jena, argued that it would require endorsement from the Union Cabinet. The Prime Minister (who ironically piloted the Bill) urged the women MPs not to press for bringing it up for voting as there was a need to consult members of different political parties to strike a 'balance' and evolve a 'consensus'. Ultimately, the Winter Session of the Parliament ended on December 20, 1996 with no indication as to when the Bill would be revived. What

³² Kumkum Chadha, *Joint Panel Suggests Amendments to Bill*, THE HINDUSTAN TIMES, Dec. 8, 1996.

remained were the repeated assurances by the Prime Minister and the Ministers of the United Front Government that the Bill would be passed at the earliest - with even the President making hints recommending the passage of the Bill time and again. What would be "the earliest" remained difficult to guess and impossible to predict.

D. Subsequent Developments

The developments in March-April saw the fall of the Gowda Government and the ascendancy of I. K. Gujral to prime-ministership. The latter sounded even more vociferous in his support for reservation for women but had to suffer disgrace at the hands of his own partymen on this issue. His efforts to get the Bill, as amended by the Joint Select Committee, tabled during the budget session of the Parliament met with much resistance, primarily due to differences in the ruling United Front. More specifically, there was a sharp division in the main component of the UF - the Janata Dal - over the issue of reservation for women. Repeated calls and all-party meetings to arrive at a consensus only served to widen the differences and to bring them into a sharp focus with the Left parties emerging as the sole votaries for reservation. Matters were complicated further with the Muslim members of Parliament deciding to oppose the Bill until they were also given a quota.

Ultimately, the Bill was moved for consideration of the House in the Lok Sabha on May 16, 1997 but put off for discussion until the Monsoon Session. This move was preceded by ugly scenes during which a Janata Dal member physically tried to prevent the Law Minister from moving the Bill. It further led to unprecedented scenes in the parliamentary history of India. The members of the Janata Dal chose to give the dignity of the office of the Prime Minister a go-by, and in their anxiety that the Bill be scuttled, forgot that the Prime Minister belonged to their own party, making a laughing stock of themselves. They would not allow the Prime Minister to speak when he got up to speak on the Bill: eventually the Prime Minister walked out in anger. The working president of the Janata Dal party, Sharad Yadav, launched a savage attack on Speaker P. A. Sangma, and obliquely on the Prime Minister, by stating in the debate:

Who do you think you are that you dare do this? We people in the middle (the castes between the forward and the scheduled) have come here without any reservation, sweating blood...do you think these women with short hair can speak for women, for our women...let them take out a rally, we'll match them, 1000 for everyone.³³

³³ Available at <<http://parliamentofindia.nic.in/lsdeb/ls11/ses5/0112089701.htm>>. (last visited 17th March, 2008).

Not surprisingly, the other leaders of the JD were mute spectators, making absolutely no effort to come to order. No progress was made and the Bill yet again postponed to the next session of Parliament. The outpourings of Sharad Yadav against *balkati* women - in his belief that the reserved seats would be cornered by short haired middle-class women - only manifests the deep insecurity amongst male politicians. Apart from such an uttering being impermissible in a civilised society, the behaviour of the MPs cannot be condoned and deserved the severest criticism from within the party. But none was made or forthcoming.

The demands for consensus were once again renewed but nothing could be achieved. The monsoon session of the Parliament commenced, but the fate of the Bill was again mired in uncertainty. No one could guess what the fate of the Bill would be. The *volte-face* of the ruling front was difficult to explain. A Bill having received support from parties across the political spectrum has been stymied mainly due to the internal bickering and gimmicks both within and without the political parties, which had consensually agreed to support the changes. In December, 1997, the Parliament was dissolved and the Bill lapsed.

IV. FURTHER FUMBLINGS: 1997 ONWARDS

During the monsoon session in August, 1997, the Speaker, Mr. Sangma made a proposal of the possibility of reducing the quota for women from 33% to 24%.³⁴ However, the women MPs and organisations stringently opposed it. The then party in power, the United Front, faced embarrassment when Prime Minister Mr. I. K. Gujral was forced to concede that he was not in a position to seek the passage of the Bill for providing reservation for women in Legislatures as promised in the Common Minimum Programme. He said that the difficulties in the passage of the Bill stemmed from "doubts, suspicion and certain mindsets which could not be brushed aside". On the other hand, the main Opposition parties and the Congress alleged that the government was wary of reducing its own commitment on reservation for women because it was sharply divided over the issues. The BJP President stated that his party would enact a law ensuring 33% reservation for women in Parliament and legislatures, if it was voted to power. Not to be outdone, the Congress (I)'s manifesto promised to reserve a whopping 262 seats in Parliament for women by amending the Constitution.

The Report of the Joint Select Committee lapsed with the dissolution of the Eleventh Lok Sabha. Fresh elections took place in Feb-March of 1998. The United Front fared badly and the BJP emerged as the single largest party to take over the

³⁴ Sangma's Move on Women's Reservation Bill Fails, THE ECONOMIC TIMES, Aug. 2, 1997.

reigns of the country. In August, 1998, despite assurances and support by the Congress and Left parties, the BJP Government could not introduce the Women's Reservation Bill. Its attempt was thwarted by the vociferousness of the Rashtriya Janta Dal (RJD) and Samajwadi Party (SP), who belonged to the Opposition. But both RJD and SP had not kept their plans to block the introduction of the Bill a secret. They had demanded that the percentage of reservations should be reduced to 15%, and that the OBCs and the minorities should also be given reservation in the Bill. This was not acceptable to the government or the Congress, which had earlier committed support to the Bill. A majority of the Congress MPs were against the OBCs minority sub-quota in the 33% reservation for women.³⁵

The Atal Bihari Vajpayee government then cleverly introduced the Eighty-Fourth Amendment Bill in the Lok Sabha on December 14, 1998. Amidst several adjournments, pandemonium and loud protests greeted this measure from those opposing the move. The Eighty-Fourth Amendment Bill did not bring about any changes to the Joint Select Committee report. Changes were suggested to the Article 330A and Article 332A proposed by the Joint Select Committee to substitute the words "nothing less than one-third" by "as nearly as may be, one third". It was also stated that in the States where the seats reserved in the Lok Sabha was less than three seats, in the first term, one seat was to be reserved for women, in the second term, the second seat would be reserved for women and in the third term both the seats could be treated as general or unreserved. In states or Union Territories with only one seat, the first term would be reserved for women and the second and the third terms shall be treated as general. Changes were also proposed to Article 239AA(2)(b) substituting the phrase "Scheduled Castes" with "Scheduled Castes and the women". Amendments were suggested to Article 333 so as to ensure that one of the members nominated from the Anglo-Indian community shall be a woman. This had been proposed by the Joint Select Committee and was accepted. Article 334A in the Joint Select Committee report wherein the review of the provision was reduced from 50 years to 15 years was presented without any changes.

Certain parties stated that they favoured reservation but not of the order of 33% as proposed, and that a beginning be made with a whittled down 10-15% seat reservation. These issues could not be taken up until the Bill was formally introduced in the Parliament and efforts could be made to evolve a consensus in this regard. However, the die-hard opposition to these proposals came from those who espoused the cause of the socially disadvantaged, backward classes and the minorities. Their inability to accept the Bill, in its present form, stemmed from the fear that the existing Bill would only benefit bourgeois women and neglected the interests of the backward communities and the minorities. Their argument was that 33% of legislative seats

³⁵ *Government Burns its Fingers over Women Bills*, THE HINDUSTAN TIMES, Jan. 22, 1990.

would go directly to the upper and dominant castes and would neutralise the advantages of numbers that the disadvantaged and minority groups had secured after years of struggle.

The SP and the RJD took the stance that they would vehemently oppose the Bill in its present form unless it was amended to incorporate a 10% sub-quota to women from OBCs and SCs. Certain Muslim MPs and their non-Muslim allies had also demanded a quota for Muslim women within the 33% reservation promised in the Women's Bill.

On International Women's Day, March 8, 1999, the Rajya Sabha adopted a unanimous decision seeking adequate representation for women in Parliament and at all the decision-making levels and the government. The ruling BJP reiterated its commitment to provide 33% reservation for women in the Lok Sabha and the Legislative Assemblies of all States. On the other hand, in the Lok Sabha, Geeta Mukhurjee (CPI) raised the issue during the Zero Hour stating that the Bill should be introduced during the current session itself. Supporting her were the former Prime Minister, Mr. Gujral and Krishna Bose (Trinamool Congress). Bhavna Chikalia and Sumitra Mahajan (both BJP) agreed. But the discussion was converted into a veritable battlefield of conflicting crews as members of the SP and RJD made it quite apparent that they would oppose the Bill in its present form unless the Bill was amended to include reservations for women from the SCs, OBCs and the minorities. The budget session concluded without any progress in the matter.

The BJP lost a no-confidence motion in May, 1999 and the Eighty-fourth Amendment Bill lapsed with the dissolution of the 12th Lok Sabha. In a series of developments that followed, a number of political parties and personalities spoke up in support of the Women's Reservation Bill. The Rajasthan Pradesh Congress Committee, for instance accorded 33% reservation in its State Committee.³⁶ The Punjab Chief Minister and President of the Akali Dal, Mr. Prakash Singh Badal appealed to the Government to implement the proposed legislation.³⁷ The Telugu Desam Party promised to give 33% tickets for the Parliament and Assembly elections to women.³⁸ The Orissa Cabinet approved reservation of one-third of all posts in the Pradesh Civil Services for women.³⁹ The first lady of the nation, Mrs. Usha Narayanan also voiced her support on the issue of the bill.⁴⁰

³⁶ *Rajasthan Congress Accords 33% Seats for Women*, THE ECONOMIC TIMES, Mar. 25, 1999.

³⁷ *Badal Seeks 33% Quota for Women*, THE HINDU, Apr. 12, 1999.

³⁸ *CM Promises 33% Quota for Women*, THE HINDU, June 20, 1999.

³⁹ *Orissa Reserves 33% Seats for Women*, THE PIONEER, June 30, 1999.

⁴⁰ *First Lady Backs Quota for Women*, THE HINDU, Mar. 25, 1999.

Reservations for Women

The Congress Party President, Mrs. Sonia Gandhi took the lead in announcing a 33% reservation for women at all levels in the heavily male-dominated All India Congress party structure. Cutting across party lines, this move was welcomed by women. Further, she announced a 20% reservation for Dalits, tribals, OBCs and the minorities. Its rival, the BJP responded with tall promises. But the 13th General election showed that all parties overlooked all their earlier promises to field at least one-third candidates. Political leaders mounted personal attacks on each other. The 13th Lok Sabha was constituted with 46 women members, a slight increase from the earlier figure of 43. The winter session became the platform for some heated debates on the issue, with the BJP, CPM, CPI, AIADMK, All India Congress and the Telugu Desam reiterating their commitment to bring about the necessary legislation while the RJD and the SP maintained that they would oppose the Bill in its present form.⁴¹

Meanwhile, the then Union Cabinet approved the proposal for introducing the Women's Reservation Bill in the Winter Session of 1999, and the Vajpayee government introduced the Eighty-fifth Amendment Bill on December 23, 1999, which was presented with no new changes other than those made in the Eighty-fourth Amendment. Having failed 3 times in 1996, 1997 and 1998, thanks to Union Law Minister, Ram Jethmalani, the Government was finally able to introduce the Bill amidst high drama and vociferous protests by the SP-RJD combine, which also received last minute support from the BSP, JD (United) and DMK on this issue. Describing the Bill as "anti-national" and contrary to the interests of the backward communities, the SP-RJD brigade declared that they would oppose the Bill in its present form and would, in fact, launch a nationwide movement against it.⁴² The matter did not progress further in the budget session of 2000 as well.

After the election, there was little tangible support for the Women's Reservation Bill. However, the advent of International Women's Day on March 8, 2000 provided an opportunity for politicians to make equivocal statements for such a measure without really tackling the underlying issues, which had impeded consensus earlier. It was a day hyped with seminars and workshops, lunches and parties. The dominant issue discussed was the 'Reservation Bill for Women'. In Parliament, the Prime Minister, Mr. Atal Bihari Vajpayee and several other leaders from various parties urged members to unanimously pass the Women's Reservation Bill. With the issue coming back to the limelight, members of Parliament spoke at length about it, including the Samajwadi Party Member of Parliament, Phoolan Devi (better known as the Bandit Queen), who demanded at least 50% reservation for women. She argued that "since women constitute half of country's one billion

⁴¹ *Women's Bill Tabled in LS Amidst Drama*, THE HINDUSTAN TIMES, Dec. 24, 1999.

⁴² *Id.*

population, they should be given representation as per their numbers.”⁴³ While presiding over a function to mark the International Women’s Day, the Prime Minister assured that the government on its part would constitute a task force to review all provisions relating to women’s participation in the national economy. The task force, as the Prime Minister added, would help the government chalk out a programme to observe year 2001 as “Women’s Empowerment Year”. He appealed to all political parties to expedite the passage of the Reservation for Women Bill so that the empowerment of women gets legal sanctity.⁴⁴ Along with the Prime Minister, there were other prominent personalities echoing his thoughts including the Congress (I) President and leader of the opposition in Lok Sabha, Ms. Sonia Gandhi,⁴⁵ and Mrs. Margaret Alva (Congress (I)) who felt that even after fifty years of independence, discrimination against women existed which needed to be removed by involving women in the decision-making process. Dr. Heptullah applauded reservations for women in Panchayati Raj Institutions, but regretted that there was no reservation of seats for women at Assembly and Parliamentary levels.

Meanwhile, *Manushi* in its Issue No.116 (5 March 2000) gave a new turn to the discussion. According to *Manushi*, the problem with the then existing Women Reservation Bill were several.⁴⁶

Adding complexity to confusion, *Manushi* switched the argument by directing it towards political parties - requiring the latter to nominate women candidates. This was based on the assumption that women candidates once nominated had a good chance of being elected. The following table explicates what has been called a gender advantage.

TABLE 6: SHOWING GENDER ADVANTAGE

YEAR	SEATS	CONTE- STANTS	MALES			FEMALES		
			CONTE- STED	ELEC- TED	%WIN- NING	CONTE- STED	ELEC- TED	%WIN- NING
1952	489	1874	-	-	-	-	-	-
1957	494	1518	1473	467	31.7	45	27	60.0
1962	494	1985	1915	459	24.0	70	35	50.0

⁴³ Clean Women’s Reservation Bill, Urges Vajpayee, MPs, INDIAN EXPRESS, Mar. 9, 2000.

⁴⁴ PM Urges Parties to Help Pass Women’s Quota Bill, THE HINDUSTAN TIMES, Mar. 7, 2000.

⁴⁵ PM Seeks Passage of Reservation Bill, THE HINDU, Mar. 9, 2000.

⁴⁶ Dr. Jayprakash Narayan et al, *Enhancing Women’s Representation in Legislatures*, MANUSHI No. 116 (January-February, 2000).

Reservations for Women

1967	520	2369	2302	490	21.3	67	39	44.8
1971	542	2784	2698	499	18.5	86	21	24.4
1977	542	2439	2369	522	22.1	70	19	27.1
1980	542	4620	4473	514	11.5	142	28	19.7
1984	542	5570	5406	500	9.2	164	42	15.6
1989	529	6160	5962	502	8.5	198	27	13.6
1991	521	3699	8374	492	5.9	325	39	12.0
1996	543	13952	13353	504	3.8	599	39	6.7
1996	543	4750	4476	500	11.2	274	43	15.7
Total			52806	5450	10.32	2040	350	17.16

Source: September 14, 1999, *Times of India*, New Delhi

It has been argued though the number of women elected to Lok Sabha has not been impressive; their success rate (of contestants getting elected) has always been higher than the male aspirants. In my view, this approach is illusory and leaves too much in the hands of party bosses, their choice of selection of candidates and the vagaries of the electoral process. In their issue No. 117 of the month March-April, 2000, *Manushi* has given a list of numerous endorsements from prominent people in support of their Alternative Bill.⁴⁷

The Chief Election Commissioner, M.S. Gill's proposal,⁴⁸ in June, 2000 sought to make it mandatory for all political parties to nominate at least a third of women candidates for the seats contested by them. The opposition to Mr. Gill's proposal from the key political parties cast doubt on their avowed intentions to support reservations for women. Were the opposing political parties prepared to accept the principle of the political representation of women by reservation within their own parties? Their commitment to do so became doubtful once they blocked each and every proposal to secure special electoral representation for women in legislation.

The Election Commission's proposal was ostensibly based on its estimate of ground realities. In the last general election before the proposal, none of the parties put up anywhere near 30% women candidates; and the electorate chose only 10 women MPs. This may suggest that neither the political parties nor the electorate backed the 30% reservation principle through party political reservation.

⁴⁷ *Endorsements for the Alternative Women's Reservation Bill*, MANUSHI No. 117 (March-April 2000).

⁴⁸ *Parties reject EC Suggestion for Women's Quota*, THE ECONOMIC TIMES, Apr. 30, 2000.

The Election Commissioner's proposal addressed the questions as to which is the most efficient way of ensuring greater and better participation of women, and whether it would ensure participation by all classes of women or be only proxy candidates. No less, given the fact that there are reserved constituencies for SCs and STs, additional reservation for women would mean denial of that number of constituencies for males, by giving SC and ST women a double advantage to seek tickets from two sets of reserved constituencies. As against this, if the constituencies were rotated every fifth year, women in constituencies reserved in the first round will be denied the right to contest in future elections from that constituency for 15 years. This would discourage politicians from nurturing their respective constituencies because of their dwindling chances of contesting elections from the same constituency. However, if the EC's suggestion is taken seriously, this modality will certainly ensure greater participation of women in the political process without depriving any citizen the right to contest any election from any constituency (other than SC & ST constituencies). Every constituency will simultaneously have the opportunity of sending a woman representative to the legislature. But how will this proposal be enforced? Will the Election Commission de-register parties who do not make the requisite reservation by allocating seats to women candidates?

The insistence on reservations along caste lines only suggests that we have not learnt from our past experience. The politics of reservation is a product of our colonial history. The colonial masters took advantage of the prevailing diversity in India to create sub-cultural identities to hinder the process of emerging unity against alien rule. Fifty years have passed and the list of SCs is getting larger with no signs of any caste getting "de-scheduled." Perhaps - as has been suggested - the vested interest in remaining backward has not abated because of the advantages it continues to offer to the elite among the Dalits. The result is that the poor among these castes have remained poor and the rich among them have reaped the benefit on the basis of their ascribed status. The question of "reservation" along caste lines is a serious one, and should be carefully and objectively examined against the stated goal for which these reservations are created. "Reservation" is one of the "means" to attain that goal and it should not itself become the goal. That is a dangerous path.⁴⁹

Manushi inter alia proposes that:

- (i) A law amending Articles 80 and 171 of the Constitution should be enacted providing for women's reservation of one-third of the seats, elected or nominated, to the Rajya Sabha and Legislative Councils.
- (j) A law should be enacted amending the Representation of People Act, 1951, to make it mandatory for every recognised political party to nominate women candidates for election in one-third of the constituencies.

⁴⁹ *An Unequal Music (Quotas for Women Don't Add Up)*, THE TIMES OF INDIA, Jun. 14, 2000.

- (k) The law so enacted should ensure that amongst seats reserved for SC/ST also, one-third of the candidates nominated by recognised parties shall be women.
- (l) The law so enacted should seek to prevent parties from nominating women only in the weak constituencies or States.
- (m) Finally, the unit for consideration for reservations to the Lok Sabha shall be a State or Union Territory.⁵⁰

In my opinion, this is neither desirable nor workable. In order to make this scheme work, the Election Commission or some other body would have to be given the power to de-register a political party. This will draw the Election Commission, which is a neutral body, directly into labyrinth of politics. It would be better to follow the same pattern of reservations for women as for Panchayats, leaving it for the Parliament to allocate the one-third among such backward classes as it thinks fit. This has the advantage of making the proposal a constitutional reality, and leaves it to the political parties to evolve a consensus on further legislation. Although a proposal to simply provide a reservation for women of 33% could result in this benefit going to the advantaged rather than disadvantaged sectors of our society, the first step is to enact the enabling provision to make reservations possible. The next step is to ensure social and economic equity in the distribution of seats and constituencies to those classes of women who as a class are not adequately represented in the legislatures.

One view was to leave democracy to its own fate and the good sense of leaders to parties to distribute seats to women to combine electoral common sense with gender-just wisdom (*the ad hoc solution*). The second was to secure women's representation by mandating political parties (*the political party solution*) proposed by the Election Commission. The third was to follow the initiative of the 85th Amendment Bill and follow the example of the Panchayat Amendments to secure women's quotas in Parliament and the State Legislature (*the constitutional quotas solution*). In 2000, some of the political parties got together to suggest appropriate legislative changes to mandate each political party to field at least one-third women candidates in every election. Although changes were suggested in the basic electoral law (i.e. the Representation of Peoples Act, 1951), it was not clear how the law would be implemented. Would defaulting parties be disqualified? Some NGOs proposed an alternative bill for women's reservation, suggesting statutory party quotas for women.⁵¹ Meanwhile in 2002, the 84th Amendment to the Constitution froze parliamentary seats till 2021. An expanded house was not possible. In 2003, the

⁵⁰ *Supra* note 46.

⁵¹ Madhu Kishwar, *An Alternate Women's Reservation Bill*, THE INDIAN EXPRESS, Apr. 18, 2003.

various parties seemed to support the political party solution, and left it to the Speaker to evolve a consensus on the Bill.⁵² The Speaker belonged to the Shiv Sena Party which opposed political representation for women. In the meantime, other views were gaining ground. The Chief Minister of UP, Mulayam Singh Yadav opposed the quota-based 85th Amendment and wanted a new framework which would take into account caste and class differences amongst women.⁵³ The Rashtriya Janata Dal made it clear that there should be an SC and ST quota within the women's quota.⁵⁴ The People's Democratic Party leader, Mehbooba Mufti wanted to see the state of Jammu and Kashmir as one of the first states that would achieve a one-third representation of women in its legislature.⁵⁵ But the Reservation Bill in Jammu and Kashmir ran into the same kind of problems as the 85th Amendment Bill in the Centre. The State of Jammu and Kashmir had its own Constitution and could indulge the experiment which was not given to the other states governed by the Indian Constitution. Another suggestion was made by Congress Leader, Shivraj Patil to expand the Legislatures to accommodate the increase – a view that was not met with much enthusiasm.

In April, 2005 with the Congress-led United Progressive Alliance government in power, the new Speaker of the Lok Sabha, Somnath Chatterjee seemed to suggest that serious consideration would be given to the existing Women's Reservation Bill.⁵⁶ However, the Women's Reservation Bill was not on the monsoon session's Agenda of Bills, the reason given was the failure of political parties to arrive at a consensus. In August 2005, the proposal to increase the seats in the Lok Sabha to 900, and in the State Assemblies to 9000, which found partial support from the BJP, was rejected by the Left that demanded the original Bill. The SP, BSP and RJD wanted sub-quotas for backward classes and minorities within the 33%.⁵⁷ Tamil Nadu Chief Minister, Jayalalithaa suggested the conversion of some existing constituencies into two-member seats where 33% of the existing seats could be designated as dual member constituencies on a rotational basis. Towards the end of 2006, activists of the Communist Party of India backed National Federation of Indian Women (NFIW) court arrest to protest against the non-introduction of the Women's Reservation Bill. In 2007, representatives of several women's groups met President A. P. J. Abdul Kalam on June 11 and urged him to ensure speedy passage of the Women's Reservation

⁵² *Women Quota Bill in Speaker's Court*, THE TIMES OF INDIA, May 10, 2003.

⁵³ *Bill to Help Only Elite Women*, THE TIMES OF INDIA, May 7, 2003.

⁵⁴ Purnima S Tripathi, *Deferred Empowerment*, 20(11) FRONTLINE Vol. 20 Jun. 6, 2003 available at <http://www.frontlineonnet.com/fl2011/stories/20030606003403400.htm>.

⁵⁵ *Women's Reservation Soon in J & K?* THE TIMES OF INDIA, May 20, 2005.

⁵⁶ *Reservation for Women in Legislatures under Consideration: Somnath*, THE HINDU, Apr. 5, 2005.

⁵⁷ *Left Wants Original Women's Reservation Bill*, THE TRIBUNE, Aug. 5, 2005.

Bill that seeks to reserve 33% seats for women in Assemblies and the Parliament.⁵⁸ The BJP reserved 33% of party positions for women, which include State Committees and central party level.⁵⁹

The years between 2000 and 2007 have seen a series of assurances to introduce the Women's Reservation Bill in Parliament and many protests by pressure groups. But the Bill has still not been introduced, the reason given remaining the same: the lack of political consensus. The issue to consider seems to be that if political parties are so sorely divided on the question of reservation and the mode of its implementation, will reserving seats for women in the national and state legislatures ever be anything more than a mere token measure, if even that?

Amidst these political games the BJP decided to steal a march on its political rivals in January, 2008. In the first place, it threw down the gauntlet and challenged the government to bring forward the Women's Reservation Bill, promising its support to ensure that the Bill would be passed. Innocent in itself, this proposal congealed a political 'googly'. In effect, the BJP was telling the ruling Congress that if the latter agrees to an unholy alliance with the BJP, the Reservation Bill would be passed irrespective of the protests by the 'Left' and other members of the Congress-led UPA. This would inevitably have caused a fissure in the ruling alliance which is cemented together by an anti-BJP ideological resistance. Secondly, the BJP sought to upstage other political parties by indicating that it would reserve 33% of all posts in its organisational structure for women at a recent BJP National Council meeting. The party seeks to implement the reservation within next three months: this would ensure the presence of 27 women in the party's 81-member national executive.⁶⁰ But the all-powerful Parliamentary Board is exempt from the quota for women. The head of the National Women's Front would be a member of the BJP Central Election Committee, and the State Women Front presidents would be a part of their respective State Election Committees.⁶¹ It appears that this proposal is a pale shadow of the Manushi proposals, which are actually concerned with seats in the legislatures. This proposal has doubtful credentials. It has given the BJP publicity, but on closer examination, the proposal is actually quite thin. Inducting women into the organisational structure of a party does not necessarily empower them in the sense which it matters. The BJP, having some exceptions, remains a male bastion. The real issue concerns the selection of candidates and ensuring women candidates winnable seats – either by quota or design – on this issue, all political parties continue to dither.

⁵⁸ *Women's Groups Pushed for 33 pc Quota in House*, INDIAN EXPRESS, Jun. 12, 2007.

⁵⁹ *33% BJP Posts for Women*, THE HINDU, Jun. 26, 2007.

⁶⁰ Bhaskar Roy, *Finally, Women Set to Get 33% Quota*, THE TIMES OF INDIA, Jan. 29, 2008.

⁶¹ *BJP Reserves One-third Posts for Women*, THE STATESMAN, Jan. 29, 2008; *BJP to Give 33% Quota for Women in Party Posts*, THE HINDU, Jan. 29, 2008.

V. WHY THE CONTROVERSY?

The arguments for and against the reservation for women in legislatures mirror the factors that have been responsible for a low political representation of women. Thus it becomes necessary to look at the controversy from two angles: criticisms of the proposed Bill, and objections to the issue of reservation of seats in legislatures for women.

A. *Objections to the Bill*

The objections to the Bill range from laxity on part of the draftspersons not to correct obvious lapses to more fundamental objections about in the Bill and its contents. The most unfortunate of all criticisms, which is nevertheless true, is that the Bill is badly drafted. This assumes importance because during the course of the Parliamentary debates, many opponents of the Bill took recourse to these technical faults to put obstacles in the passage of the Bill. The proviso to clause (3) of the proposed Article 332A provides for the exclusion of a State from the purview of the amendment "so long as the number of seats allotted to such State is less than three" and is superfluous because no state has a Legislative Assembly of less than three members. Further, keeping the Union Territories outside the scope of the benefit conferred by the amendment is inexplicable, since many of the Union Territories, like Pondicherry, have a Legislative Assembly.

The fixing of the number of seats for women at one-third of the total number of seats to be filled by direct election to the House of People or the Legislative Assembly in a State seems to have no demographic or other rational basis. This is the figure provided for in case of reservation for women in panchayats and municipalities; but it is difficult to understand why this was agreed upon when the Constitution itself recognises the principle of the number of seats being proportionate to the population of the group for which reservation is provided.⁶² It has been suggested that reservation of 50% seats in the Lok Sabha for women should at least be proportionate to the population of women in the country. However, even the figure of 33% is higher than the standards recommended by the UN Commission on the Status of Women in 1990 that a critical 30% participation threshold be regarded as the minimum for the decision-making position at the national level.

The 'one-out-of-three' seats formula behind the one-third reservation may pose a special problem where a particular state sends less than 3 members to the Lok Sabha such as in the case of Goa, Sikkim, and the north-eastern states barring Assam. It may be possible to overcome this difficulty by reserving the seat during one term

⁶² INDIAN CONST. Article 330(2), 332(3).

for a woman candidate and de-reserving it in the next two terms. The Bill recognises that such States would need to be treated differently when it provides that the general provisions would not apply to a State or a Union Territory, which returns less than three Members of Parliament.

The decision to extend reservations only to the directly elected houses, keeping the indirectly elected upper houses (the Rajya Sabha in case of the Union Parliament, and the Legislative Councils in case of States where they exist) outside the purview of the amendment is questionable. However, it may be pointed out that though reservations for SC/ST have existed for decades in the Lower Houses of the Assemblies and Parliament, these have not been extended to the Upper Houses of those bodies. The position of women is no better in the Upper Houses, especially in the absence of attempts to make up for the low numbers of women members in these Upper Houses through nominations permissible in that House. A comprehensive legislation must necessarily extend the concept of reservation to the Upper Houses. It is also important to bear in mind that the advantage gained by women in the Lok Sabha may be lost by an overwhelming majority of males if there is a joint sitting of the Houses.

The Bill also does not provide for any renewal in the sense of prescribing for how long the reservations are to continue. The Constitution had originally provided reservation for SC/ST in legislatures for a period of ten years from the commencement of the Constitution. But through subsequent amendments,⁶³ these reservations have continued for a period of fifty years from the commencement of the Constitution to the beginning of the next century. Some versions of the proposed amendment to introduce reservations for women lay down no time limit for which reservation for women is to continue, making it a provision in perpetuity.

The system of rotation (i.e. choice of seats for reservation by lottery every term, with one-third of the constituencies being selected) de-reserved next term and further selections being made from the remaining two-third of the constituencies by lottery in the next term appears impractical. The whole system will only be further complicated by providing that one-third of the one-third seats reserved for women shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes. The modality of allocation of such seats within the reserved seats does not appear to have been considered, and would need to be carefully worked out if and when the Bill is passed. Such a system has been criticised, as it would act as a disincentive to nurturing a constituency. The representatives would have no desire to responsibly build and serve their constituencies, since there would always remain the possibility of its being de-reserved the next time. However, this does not hold true in all cases, as even when a constituency is de-reserved, there would be no

⁶³ *Supra* note 5.

bar to a woman representative being re-elected. However, given the predominant role of party politics in India, the large size of constituencies where it is next to impossible for most candidates to build up a personal rapport with voters, and the fact that elections are rarely won on the basis of the personal attributes of the candidate, most representatives ignore their constituencies after being elected. Politicians remember the constituencies only during elections.

Only some of these difficulties are considered in the recommendations of the Joint Select Committee.

B. Objections to Reservation for Women

We have already traversed many principled objections to providing reservations, and the term for such reserved seats for any class or group. It has to be recognised that such reservations are necessary to redress the wrongs which will remain un-redressed if women are not politically empowered to set those wrongs right. However, there are also objections that these measures will not transcend the 'bibi-beti-bahu' (women as wife, daughter, daughter-in-law) syndrome that characterises Indian society. Men do not wish to hand over political power, which they regard as their preserve, to women.

One of the concerns expressed is that reservation for women in the legislatures poses a threat to national integrity by perpetrating divisive tendencies. It is suggested that such reservations would open a Pandora's Box, inviting various diverse 'interests' to polarise an already divisive Indian politics even further. It is argued that reservations should not be provided merely on the basis of sex. However, the argument of fissiparous tendencies of reservation for women does not hold ground in view of the already recognised principle of demarcation of a certain percentage of seats for members elected by 'groups' such as SC, ST, OBC and teachers and local bodies' members and university graduates in the State Legislative Councils.⁶⁴ Even in the Lok Sabha, the President may appoint two members belonging to the Anglo-Indian community if he feels that they are not adequately represented in the Lok Sabha.⁶⁵ Further, the framers of India's Constitution firmly rejected the concept of separate electorates on the basis of religion as existed in British India and made it clear that there shall be only one general electoral roll for every territorial constituency.⁶⁶ However, they promoted reservation for disadvantaged persons as consistent with democratic norms and social justice.

⁶⁴ INDIAN CONST. Article 171.

⁶⁵ INDIAN CONST. Article 333.

⁶⁶ INDIAN CONST. Article 330 and 332.

It is also argued that reservation of seats for women in the legislatures might result in most of such seats being cornered by upper castes and classes to the exclusion of others. Such an argument however holds good for all seats of all descriptions. Ingrained in this is the more serious demand of reservation of seats for OBC women. While the Bill takes into consideration, and provides for reservation of seats for SC/ST women, it makes no mention of OBCs. The OBC movement acquired great notoriety when the V. P. Singh government fell because they sought to introduce representation for OBCs by way of job reservations in the administrative services of the Union of India. While the Supreme Court sanctioned but disciplined such representation in the bureaucratic services in the Mandal case⁶⁷ after protracted arguments, the OBC movement grew politically stronger to become a powerful electoral force in Indian politics. While the constitutional scheme sanctions reservations in educational opportunities and Government services for the OBCs, in terms of seats in the House of People or the State Legislative Assemblies, reservation was provided in the Constitution for only the SC/ST.⁶⁸ The issue of reservation for OBCs raised its head during the debates on the 73rd and 74th Amendments to the Constitution. However, the amendments left the issue of reservation of seats in Panchayats and Municipalities in favour of any backward class of citizens to the discretion of the State Legislatures.⁶⁹ Some members condemned this. Shri M. Padmanabhan said:

Why is not reservation for backward classes made mandatory in this Bill? This is again left to the discretion of the State. Why this discrimination? Is not this Government interested in the welfare of the backward classes? Is it not prepared to give a share in the political power to the backward classes? They should have made this provision also mandatory, and the State Government should decide which backward class should get how much percentage of reservations.⁷⁰

The "growing concern" for the protection of interests of the backward community and minority women needs a bit of analysis. There is a danger of this issue being used to scuttle the passage of the Bill. It is uncanny that the people raising the issue of separate quota for OBC women are silent on the issue of separate quota for OBC men. Figures show that given their numerical strength and social position, certain constituencies are in fact wholly OBC-dominated. In recent years, OBCs have come to dominate most State Legislatures and maintain a heavy presence in the Parliament. OBC women have a certain advantage over upper caste women in any electoral battle, since the latter shall never be in a position to influence OBC votes.

⁶⁷ *Supra* note 5.

⁶⁸ *Supra* note 5.

⁶⁹ INDIAN CONST. Article 243-D (6) and Article 243-T (6).

⁷⁰ *Supra* note 27, at col. 173

Therefore, there really is no merit in the demand for separate quota for OBC women. In order to win in certain constituencies reserved for women, the woman candidate would have to be an OBC. Women cannot be used to further caste-based politics and to change the caste composition of legislative bodies instead of letting them evolve gender-based agendas and strengthen gender solidarity. To infuse the idea of caste and communal quotas and micro-mini quotas within the larger quota for women generally is to create a criss-crossing of movements of various oppressed sections and to lose sight of the larger political objective of securing gender justice.

The greatest obstacle to the emergence of women as major players in the political field has been the patriarchal view that a woman's place is in the home. Women in India are taught from a young age that they are to accept a position inferior to that of the man. Consequently, hardly any significant percentage of the leadership of parties consists of women. The number of women contesting elections remains minimal and those who win are exceptions. Men fear that they will stand to lose one-third of the seats in the legislatures, which they feel are theirs. Translated into figures in the case of Lok Sabha, this would mean a loss of about 145 seats since reservation would bring 182 women into the Lok Sabha, while at present there are only 35 women in the Lok Sabha. There would be a much larger loss of seats in the State Legislatures. These prejudices lie deep and go to the root of the failure to secure a non-controversial passage to the Reservation for Women's Bill.

Closely linked to all this is the argument that reservation for women in the legislatures would be nothing but carrying over the '*bahu-beti-bibi*' culture into the precincts of the legislatures, with mainly those women getting elected, who are the daughters-in-law, daughters or wives of the established or famous deceased politicians. The Indian sub-continent bears ample testimony to this. Indira Gandhi - the sole woman Prime Minister of India rose to her position as part of the Nehru Legacy. Similarly Benazir Bhutto in Pakistan emerged as a political figure after her father's martyrdom. The Bandarnaike-Kumaratunga combination of mother-daughter in Sri Lanka gained prominence out of the Bandarnaike's legacy while the two major rivals in Bangladesh, Sheikh Hasina and the former Prime Minister Khaleda Zia, are inheritors of the goodwill earned by their father and husband, respectively. Even the reverence with which Sonia Gandhi is looked upon is traceable to the fact that she is the widow of late Prime Minister Rajiv Gandhi and the daughter-in-law of Indira Gandhi. Thus, politically successful women have succeeded through the political mileage gained out of the political standings of their male relatives. Witness the case of Laloo Prasad Yadav making his wife the Chief Minister of Bihar on being charge-sheeted in the 'fodder scam' to keep the reins of power in his own hands. Howsoever true this might be, there are also examples of women who have emerged as political leaders in their own right.

It is argued that instead of acting independently, women MPs or MLAs would be mere 'puppets' in the hands of the male family members. This argument has greater relevance to the realm of grassroots democracy where the family is directly interacting with the grassroots political institutions, and the elected women members are influenced by, or even act according to, the dictates of the men-folk. In the actual working of the reservation clause in the context of Panchayats, it has been found that in some Panchayats, women - though elected - sit at home while the males of their family attend to their work in the Panchayats by taking decisions, without referring to them. But such instances cannot mask the reality that through the process of reservation for women, nearly one million women have been elected to responsible positions. They have been empowered and are in a better position to influence and take important decisions. Given the social structure, it may be some time before women are in a position to shape their destinies and play a more assertive role in the political arena. But that is no reason for not empowering them now. At the State and Union level, this process of empowerment through reservation in legislature would only be a natural extension of the step initiated at the grassroots level. By this, women would become equal partners in decisions which are going to affect other women in the country and would enable them to give a 'women's' perspective to the policies declared by the government and laws enacted by the legislatures. The fact that all the women MPs cutting across party lines rose in unison in support of the Bill, demanding its passage at the earliest, as well as the fact that the measure failed due to their lack of numbers is ample proof of the necessity of such reservation.

It has been strongly urged by many 'feminists' that this kind of reservation would lead to political 'ghettoisation'⁷¹ because women would compete only against women. It is suggested that women will begin to "view each other as rivals rather than as potential allies to work with on issues of common concern". No doubt, women would be competing against other women candidates. Even so, in the long run, the real purpose of ensuring representation to women in the legislatures would be ensured.

As far back as 1974, in its Report entitled "Towards Equality", the ten-member Committee on the Status of Women in India constituted by the Central Government made recommendations for the advancement of women. However, it was opposed to reservations and gave seven reasons for not recommending reservation in elections:

So far women have served as representatives of the people. Separate constituencies for women would narrow their outlook. There is a fallacy in the entire argument for separate representation for women. Women's interest as such cannot

⁷¹ Madhu Kishwar, *Women in Power: It Could Lead to Ghettoisation*, THE TIMES OF INDIA, Sept. 22, 1996.

be isolated from economic, social and political interests of groups, strata and classes in the society. Such a system of special representation may precipitate similar demands from various other interests and communities and threaten national integration. Experience has shown that the privilege of reservation once granted is difficult to withdraw. This would amount to perpetuation of unequal status. Women have been competing as equals with men since 1952. They must continue to do so and stand on their merits and intensify their political and social life. A departure from this equality now will be a retrograde step. Women are not concentrated in certain areas confined to particular fields of activity. Under these circumstances, there can be no rational basis for reservation of women.⁷²

While the Committee may have been justified in making these observations in 1974, in the year 1997, nearly 23 years later, the status and position of women has not improved within the existing political system. Though some of the arguments advanced against reservations are valid, nevertheless it has become necessary to create innovative constitutional measures to ensure greater political participation of women.

VI. CONCLUSION

The low political representation of women has only worked to perpetuate the unequal status of 'suffering' by them. The inevitable consequence has been that their concerns and fundamental needs are never adequately articulated. The programmes for their welfare are not backed by any political will due to which their implementation remains only on paper. In fact, they are just populist measures announced by the party in power from time to time. Various laws that are passed do not take into account the 'woman's viewpoint' which often results in discriminatory provisions in the laws. Low representation makes it impossible for women to make their voices heard and obliges them to make compromises. This goes against the ethos of a democratic society committed to equality irrespective of sex. Thus, it becomes necessary to reserve seats for women in the legislatures. Empowerment through reservation of seats in legislation would enable the women to voice their demands for justice. Ultimately, politics is but a microcosm of the society; and such a measure would inevitably bring about social and economic empowerment of women.

Many suggestions have been put forward, either as an alternative to the reservations envisaged by the Bill or as an improvement to ensure a more effective system of representation of women. Justice Venkataramaiah expressed the view that there is no need to reserve constituencies in order to ensure that women are

⁷² TOWARDS EQUALITY 21 (1974).

represented in Parliament: "Instead, elect a man and a woman from every constituency."⁷³ Many others have also favoured multi-member constituencies. Some parties – notably the BJP – have proposed a one-third women's representation in parts of their organisation. It has also been suggested that instead of reserving constituencies, the parties should undertake to reserve one-third of the seats for women candidates at the time of allocation of seats. To secure this an amendment would have to be made to the Representation of People Act to ensure that the parties fulfil this mandate. These alternative proposals have undermined the original proposal for a reservation of seats, which was originally supported by all political parties.

It is axiomatic that any attempt to empower should be beset with hurdles, hitches and hiccups. In the past, such dilatory tactics were visible in the passage of Bills seeking to extend protection to women in certain areas. The Pre-Natal Diagnostic Technique (Regulation and Prevention of Misuse) Act, 1994 was passed only in 1994 after much time had lapsed since its introduction in 1991. The amendment to the Dowry Prohibition Act, 1961 took four years to be passed and various provisions discriminating against women in various laws are still to be removed. In the case of the present Reservation Bill, the expectations of easy and speedy passage were high since the move to reserve seats for women in the Lok Sabha and the State Legislative Assemblies had, ostensibly, received unanimous support from all quarters. However, the Government and the other political parties developed cold feet once the Bill was introduced. The fate of the Bill remains, as yet, unknown, amidst reports that attempts are being made to bring suggestions of the Bill round to accepting a much watered down Bill which would provide only 15% or 20% reservation to women.

The stance adopted by the various parties smacks of nothing but thinly disguised hypocrisy and rank opportunism. Publicly they declare that they are in favour of the Bill being passed at the earliest to keep up pretence of being progressive. Opposition parties use the existence of the Bill and its defects as a weapon to attack the party in power. None of them have the courage to come out openly against the Bill. Successive governments have been the worst culprits in this regard, failing to lead from the front and preferring to wait and watch till such time as the women members of their own parties and the activists are tired, and stop putting pressure on the Government to pass the Bill.

Whatever be the shortcomings in the Bill, the Government should take urgent steps to rectify them and bring the Bill for the consideration of the Houses of Parliament. A Bill such as this, which is important for bringing about empowerment of women, cannot be allowed to be scuttled without even a fair discussion on the

⁷³ Justice E.S. Venkataramiah, *Is Reservation the Answer?*, THE ECONOMIC TIMES, Dec. 12, 1996.

floor of the House. Let those who are opposed to it vote it out, if they can muster the necessary courage to do so. At least, then, the supporters of reservation would know how much support they can muster within the existing system and where they need to work harder.

Reservations for women in the legislatures may not be acceptable to all but would most certainly alter the 'balance of power' structure in the country. It is true that reservations would not provide the solution to the problems of women, but as observed by Lalita Panicker:

Bringing more women into Parliament may not transform society overnight. Women are just as susceptible to the corrupting influences of power as seen in the case of former Tamil Nadu Chief Minister Jayalalitha. But the Panchayati Raj experiment has shown that when given a chance, women do try much harder than their male counterparts to make a visible difference. While there is some merit in the perception that some of them are controlled by their men folk, this is a transitory phenomenon before a real change in power equations comes about. An empowered woman is not going to allow herself to be dictated to indefinitely.⁷⁴

Reservation in the legislatures would have to be backed by more positive measures to make good the promise of social justice for all women. These would include cleansing the existing laws of their discriminatory provisions, enacting progressive laws to protect women and providing welfare measures. Along with this, concerted efforts are needed within the family and at the workplace to bring about attitudinal changes to make it more conducive for women to participate in politics.

Though most of the political parties in the country are more or less unanimous on the need to extend reservation to women in pursuance to the larger goal of gender equality, many are not clear about the extent and the manner in which such reservation should be structured.⁷⁵ The conduct and obstinacy of certain parties as

⁷⁴ Lalita Panicker, *Rights of Passage: Women in Political Power Solutions*, THE TIMES OF INDIA, Sept. 20, 1996.

⁷⁵ The articles in favour of reservation include B. Krishnarao, *Bringing up Women*, THE ECONOMIC TIMES, Sept. 14, 1996; Gita Aravamudai, *Reservation for Women?*, THE HINDU, Sept. 15, 1996; Jayanthi Natrajan, *Reservation for Women*, THE HINDU, Sept. 20, 1996; Devaki Jain, *The 33% Solution: The Idea is to Change the Power Equations*, THE TIMES OF INDIA, Sept. 22, 1996; R.D. Sharma, *Reservation in Parliament*, THE PIONEER, Oct. 2, 1996; Brinda Karat, *Ending Subservience to Men*, INDIAN EXPRESS, Dec. 3, 1996. For a *contra* view, see Madhu Kishwar, *Why*

regards the proposed legislation have prevented it from being tabled and debated upon. Statistics show that none of the political parties had fielded 33% women candidates for the recent elections in 1999, in spite of the fact that the winning percentage of women candidates has been higher than that of the men in the last Lok Sabha elections. The Bill has not made any headway since the time it was first introduced in the Lok Sabha on 13 September, 1996. The Bill in its present form accords a blanket 33% reservation to women in legislative bodies, which is beneficial with regard to their insignificant numbers in Parliament. In the 50 years in India's Independence, the number of elected women members in Parliament has registered a dismal increase. When the Bill was first introduced, it met with the lack of "political will" and indecisiveness on part of the ruling party itself. In the course of time and changeover of governments, the delay in implementing the Bill has acquired new dimensions.

My simple solution is to enact the Bill now and leave it to Parliament or the political parties to evolve the mechanism to distribute seats across the social and economic spectrum in a fair and equitable manner. The alternative solution of not providing reservation of seats for women in legislatures and to leave the representation of women to political parties to field women candidates (and suffer de-registration if they fail to do so) is both skewed and dangerous. Indeed, the better solution might be to let the political parties decide on the persons or communities to who and whom they wish to distribute tickets to fight elections. Everything cannot be worked out in the Constitution.

Feminize Corruption?, THE INDIAN EXPRESS, Oct. 4, 1996; M. Rama Jois, *Reservation for Women is Undemocratic*, THE INDIAN EXPRESS, Oct. 15, 1996; Syed Shahabuddin, *Women's Bill: Elite Ploy to Perpetuate Control*, THE PIONEER, Oct. 22, 1996; Shastri Ramachandran, *Female Fantasy: Quota for Preying on Patriarchy*, THE TIMES OF INDIA, Dec. 4, 1996; Surjit S. Bhalla, *En-gendering Bad Policy*, THE ECONOMIC TIMES, Dec. 16, 1996.