

ENHANCING WOMEN'S REPRESENTATION IN LEGISLATURES

An Alternative to the Government Bill for Women's Reservation

The ugly scenes and stalemate over tabling the Women's Reservation Bill in parliament have had a very beneficial effect. They have finally brought the grim truth into sharper focus that politics has proven to be very inhospitable for women in independent India. What we are witnessing today is a worrisome phenomenon of further decline in the participation of women, not only in our legislatures, but in many of our other political and public spaces.

Most countries in the world have failed to give due space and representation to women in their political life. Women are moving in the direction of near equal participation in only a handful of countries such as Germany, Sweden, Norway, Denmark and Finland. In these societies women have begun to seriously alter the very nature of politics, making enduring, and substantial gains in every field. However, in all other countries, including the supposedly advanced democracies of western Europe and North America where women exercise certain freedoms and have acquired the wherewithal for economic independence, female presence in legislatures remains small and relatively insignificant.

In India the problem for women is more serious for several reasons:

1. While in many other countries women are inching forward bit by bit, in India the participation of women in politics has actually come down than it was earlier in our history, both in quantity and quality.
2. Government and politics are more important factors in the economic, social, and power structures in India than in most other countries with stronger civil societies, and so, the effect of women's marginalisation in politics is even more detrimental here.
3. The increasing violence, sexual harassment and victimisation of women at the ground level in many of our political parties has made their participation far more hazardous than earlier in our history.

There were many more outstanding women leaders and workers in the Congress Party at all levels during the freedom movement than are at present in all parties put together. In states like Maharashtra and Gujarat, virtually every neighbourhood and most villages could boast of at least one effective woman leader, even into the 1950s. But as politics became more central as well as criminalised thus undermining all other institutions of civil society, women were pushed out of leadership positions to function on the margins, at best relegated to the domain of social work at the local level. Even that tradition eroded from the 1970s onward.

The set back to women's participation is even more severe at the state level than in Lok Sabha. This is clearly evident in Bihar, which had 14 women elected in 1952 to the Vidhan Sabha, 31 in 1957, and 26 women in 1962. But in the 1967 elections, women won only 11 seats. Their number declined to 4 in 1969. Thereafter, it reached a plateau, to end at a mere 13 during the last state assembly elections.

The representation of women in the Lok Sabha has basically remained stagnant. It went 8 percent in 1984. It has declined since then and now stands at a mere 6.8 percent. This despite the fact that every major national party in recent years has declared through their manifestos that they would implement a 33 per cent reservation for women in all legislatures.

One of the most puzzling features of the depressed level of women's political representation in our legislative bodies is that it seems to have no direct correlation with literacy and other seemingly logically related indicators. A comparison between the states of Kerala and Rajasthan, whose literacy rates are at opposite ends of the spectrum, demonstrates this clearly.

In Kerala, the overall literacy rate is reportedly 90 percent with 86 percent female literacy. By contrast, in Rajasthan, female literacy is a mere 20 percent and only 12 percent of the females are literate in rural areas. Kerala has a matrilineal tradition in which women have a much larger measure of autonomy and freedom of movement. Kerala's women also tend to marry at a much later age compared to women in other states. Most women in Rajasthan live far more restricted lives in aggressively patriarchal communities, many of whom still practice purdah and even child marriages. Even the cultural and educational advantage, that women in Kerala have, could not translate into higher political participation as compared to Rajasthan. The percentage of women in the legislative assemblies of both states is low. In Kerala it rose from less than one percent in 1967 to six percent in 1991. However, in Rajasthan, the representation of women was four percent in 1967 and reached eight percent in 1985-90, slightly more than in Kerala, but not significantly greater. Since then it has been going down.

Similarly, the state of Manipur, which has a tradition of women playing a dominant role in both the family and the community (again due to a matrilineal heritage) never elected a single woman legislator till 1990 —when it elected its first. A similar low level of women's representation is true for Nagaland and other North-eastern states, which are known for a less repressive culture for women. By contrast, though the proportion of women in politics is very low in UP, Bihar, and Madhya Pradesh. Though these are the states known for their low education levels and repressive cultural norms for women, they have not only sent a relatively larger proportion of women to the Lok Sabha than those from the north-east, but have also elected relatively more female MLAs.

In independent India, pervasive gender discrimination results in bypassing and ignoring veteran women politicians. It is far more difficult for women to establish a foothold without patronage from powerful men in the party —that too through close personal relations — as wives, daughters, sisters or even mistresses. This is indeed a matter for serious concern because the political participation level of women in any society acts as a reliable barometer of the health of its democracy.

It is significant that stagnation and/or decline in women's political participation rates run contrary to trends in many other fields.

Women in India have made significant headway in various male-dominated professions, including in the governmental bureaucracy. In the fields of business, medicine, engineering, law, art, and culture, women who were given opportunities to acquire the necessary skills and education have proven themselves capable of holding their own without any special measures to facilitate their entry. But they have failed to gain ground in the field of politics. Moreover, the agenda of women's empowerment seems to have lost the kind of moral and political legitimacy it enjoyed during the freedom movement, as was evident from the ugly scenes over the tabling of the Women's Reservation Bill in parliament. Such a response would have been inconceivable in India of the 1920s to the 1940s.

All these trends indicate that women's representation in politics requires special consideration, and cannot be left to the forces that presently dominate our parties and government. Today, even the best of our female parliamentarians feel sidelined and powerless within their respective parties. The few women in leadership positions in various parties have not been able to facilitate the entry of greater numbers of women in electoral and party politics, and are an ineffective minority within their own respective political groupings.

The very same male party leaders who compete with each other in announcing their support of special reservations for women have shown little willingness to include women in party decision-making, or even to help create a conducive atmosphere for women's participation in their respective organisations. In fact, women's peripheralisation is even more pronounced in the day to day functioning of almost all political parties than in Lok Sabha. Therefore, it is urgently required that we take special measures to enhance women's political participation in ways that help them influence decision-making at all levels of our society and polity. Our democracy will

remain seriously flawed if it fails to yield adequate space to us.

Given this worrisome scenario, the national debate and efforts to provide constitutional and legal mechanisms to enhance women's participation in legislatures are welcome and long-overdue.

PROBLEMS WITH THE PRESENT BILL

However the 85th constitutional Amendment Bill introduced in Lok Sabha in December 1999, towards this end is extremely flawed and is likely to do more harm than good.

The following are the key provisions of this Bill:

- (1) One-third of all seats in legislatures shall be reserved for women.
- (2) Such reservation shall also apply in case of seats reserved for SC and ST.
- (3) There shall be rotation of seats so reserved for women.
- (4) Such rotation shall be determined by draw of lots, in such a manner that a seat shall be reserved only once in a block of three general elections.

This Bill mechanically provides for entry of women members to fill one-third of vacancies in legislatures. Such mechanical reservation and rotation suffers from the following serious defects.

- (1) 1/3 seats are reserved, and such reserved seats are rotated in every general election; it will automatically result in two-thirds of incumbent members being forcibly unseated in every general election; the remaining one-third will be left in limbo until the last moment, not knowing if their constituency will form part of the one-third randomly reserved seats and thus require them to scramble at short notice to find another seat to contest.
- (2) Already there is resentment about reservation of the same seats for SC and STs over a long period of time without rotation; Inevitably there will be vociferous and justified demands for rotation of seats reserved for scheduled castes, and in some cases scheduled tribes, where their population may not be very large; This will trigger off further instability in our polity.
- (3) The population of scheduled castes and scheduled tribes is now estimated to be around 16% and 8% respectively on an all India basis. In certain states, their combined population is much higher, reaching 35% or more. In the event of rotation of all reserved seats (women plus SC, ST) with one-third seats reserved for women, every single seat will be rotated in every general election, and this means that practically every member of a legislature will be unseated in every single general election.
- (4) Such a compulsory unseating is violative of the very basic principles of democratic representation. It jeopardises the possibility of sensible planning to contest and nurture a political constituency for both men and women.
- (5) As legislators do not have the incentive of reelection from the same constituency, plunder will increase, and politics will be even more predatory and unaccountable. This will contribute to a more unstable political process, and make it difficult for women to build their long term credibility as effective representatives, since they will not be able to contest twice from the same constituency.
- (6) If seats are reserved exclusively for women in every election through territorial constituencies, voters in such reserved constituencies would have no choice but to elect women only, violating the basic canons of the theory of representations.

- (7) In such a situation, there is likely to be greater resentment against women, undermining the very objective of the Bill. Those men who get pushed out of their constituencies, or who see their allies sidelined will either sabotage female contenders in revenge, or spend much of their political capital helping their own female relatives in cornering these reserved seats. Such proxies would be expected to keep the seat "safe" for the men until the next election, when they would again try to reclaim their seats. Such women when elected would lack legitimacy in the eyes of the voters.
- (8) Women elected in reserved constituencies will be contesting against other women only, and will lack the legitimacy and opportunity needed to prove their ability and acceptability.
- (9) Women legislators when elected will not be able to nurse their constituencies on a long-term basis, and thus will be deprived of a strong political base, and will forever be regarded as light-weight politicians. This, in effect will make their presence in legislatures ornamental, and will not lead to a more effective participation in politics.
- (10) Leadership acquired in such a manner will be seen as unnatural, artificial and foisted.
- (11) This Bill does not address the more fundamental issue of inadequate participation of women in politics and their much greater marginalisation within the political parties.
- (12) The experience of fixed quotas in a few countries where it was tried, such as Nepal, the Philippines, and the erstwhile Soviet Union, has not produced very successful results for women's political participation.
- (13) This Bill is completely silent about women's representation in Rajya Sabha and Legislative Councils.
- (14) While this Bill provides for election of SC and ST women as legislators, it does not adequately address the issue of participation of BCs and minorities. As parties have no choice about the seats reserved for women, they will be unable to nominate women candidates from these underrepresented sections in constituencies where they stand a reasonable chance of success.
- (15) Even though there will be no legal bar on women standing from general constituencies, it is highly likely that few women will obtain party tickets to run for office outside the reserved constituencies. This same pattern is evident with SCs and STs who have been permanently ghettoised to fixed reserved constituencies.

Given these serious infirmities, it is necessary to design better models for enhancing women's representation in legislatures. We present an alternate model which will address many of the flaws listed above.

AN ALTERNATE BILL FOR THE ENHANCEMENT OF WOMEN'S POLITICAL PARTICIPATION

- (1) A law should be enacted to make it mandatory for every recognized political party to nominate women candidates in one-third of the constituencies.
- (2) Each party can choose where it wishes to nominate women candidates, duly taking into account local political and social factors into account.
- (3) Among seats reserved for SCs and STs also, one-third of the candidates nominated by recognized parties shall be women.
- (4) To prevent a party from nominating women candidates in states or constituencies where it is weak, for purposes of this Act, for Lok Sabha the unit for consideration shall be a state or Union territory, and for State Legislative Assembly, it shall be a cluster of three Lok Sabha constituencies.

- (5) In the event of any recognized party failing to nominate 1/3 women candidates, for the shortfall of every single woman candidate, two male candidates of the party shall be treated as independents.
- (6) A constitutional amendment should be enacted providing for reservation of 1/3 of the seats, elected or nominated, to Rajya Sabha or Legislative Councils for women.

The draft Bill amending the Representative of People Act – 1951; and the Constitution Amendment Bill incorporating the above provisions are enclosed.

Advantages of this Model

- (1) Parties will be free to choose their female candidates and constituencies depending on local political and social factors and where they feel women candidates can offer a good fight rather than in pre-fixed lottery based constituencies, where they may or may not have viable women candidate. Thus there is flexibility and rise of natural leadership.
- (2) Though seats are not reserved, there will be a large pool of credible and serious women candidates in the fray. This is so because the real contest in elections is only among candidates nominated by recognized parties.
- (3) A woman candidate will be contesting both against female and/or male candidate of rival parties. Therefore, the democratic choice of voters is not restricted to compulsorily electing only women candidates.
- (4) As women members get elected in competition with other candidates without reserving seats for them they will be seen as legitimate representatives in the eyes of the public and not just beneficiaries of charitable measures.
- (5) A winning woman candidate will have been elected on her own strength, backed by party support. She will not be a mere proxy or political light weight.
- (6) There will be no need for rotation of reservation. Therefore the elected women and men can nurture their constituencies and emerge as major political figures in their own right, with independent power base.
- (7) At the same time, in the absence of reserved seats, there will be healthy competition for nomination for a particular seat between male and female politicians.
- (8) Parties will be able to nominate women from BCs, minorities and other communities for elective office in areas where there is electoral advantage to them. This obviates the need for quota within quotas –an issue which has blocked the existing bill. Those who are concerned about backward caste representation don't need to settle merely for 1/3 quota for BC women within the 33% women's quota as they are demanding now. They can field as many BC or MBC women as they think appropriate.
- (9) This method is mostly likely to find favour with political parties and incumbent legislators, as there will be no fear of being uprooted at short notice by draw of lots. Both compulsory reservation and regular rotation are avoided.
- (10) This model provides for reservation of seats for women in the upper houses.
- (11) Unlike with the lottery system of reserved constituencies, where women's presence is likely to get ossified at 33 per cent since there would be resistance to letting women contest from non-reserved constituencies, this model will allow for far greater flexibility in the number and proportion of women being elected to legislatures. If women are candidates for one-third of all seats contested by each party, theoretically they could

even win the vast majority of seats –all on merit. However, given the present state of affairs, it is likely that to begin about 20-25 per cent of the contested seats will be won by women. But this percentage is likely to grow over time as women gain more confidence and strength. It also ensures that their presence in legislatures more nearly reflects their actual electoral strength so that they are not seen as mere recipients of charitable measures.

Plugging the Possible Loopholes

- (1) A party may be tempted to nominate women from constituencies where it is weak. However, by making the State or UT as the unit for Lok Sabha, and a cluster of three Lok Sabha constituencies as the unit for the Legislative Assembly, this risk is obviated. Parties will be compelled to nominate women in all States and regions. No serious party seeking power can afford to deliberately undermine its own chances of election on such large scale. It is also mandatory to nominate women in 1/3 constituencies because otherwise twice the number of male candidates of the party will lose party nomination.
- (2) In the absence of actual reservation of seats, women may not be elected in 1/3 constituencies, as the voters may prefer a male candidate over a female candidate on account of gender bias. However, evidence so far suggests that woman candidates of parties have not suffered any gender discrimination in the hands of voters. In fact, very often, the percentage of success of woman candidates is higher than that of male candidates. Therefore, it is reasonable to assume that women will be elected in large numbers, and in fact their presence in Lok Sabha will exceed 1/3 in many cases. In any case, past evidence suggests that at least in a quarter of the constituencies women are likely to get elected if recognized parties nominate women in at least 1/3 constituencies.

OTHER NECESSARY MEASURES FOR ENHANCING WOMEN'S PARTICIPATION

While it is necessary to institute a system of reservation for women as spelt out above, by itself this or any other system of ensuring women's presence in legislatures is not sufficient if our objective is to ensure that women should be equal partners in democratic politics. The problem is not just that women in the political arena are denied tickets by political parties. The fundamental problem is that given the nature of electoral politics today, women face often-insurmountable system obstacles. A proposal for reservation for women must therefore be a part of a larger package of general reforms in electoral politics.

The following general measures of electoral reform would go a long way towards making electoral politics less unfriendly for women.

- (1) Measures to check criminalization of politics:
 - (a) The list of offences where a conviction attracts disqualification from contesting election should be expanded as per the recommendations of the Law Commission.
 - (b) Disqualification should not be conditional upon final conviction. It should come into operation as soon as the judge has framed charges with references to offences specified above.
 - (c) A candidate should be required to make a declaration of all the cases pending against him or her, involving charges of criminal conduct or corruption, at the time of filing of nominations. This declaration should be made public. False declaration should be a ground for disqualification.
2. Measures to bring about internal democracy within political parties: All the recognized (national or state) political parties should be required to include in their respective constitutions:

- (a) Rules governing the membership of party and a Register of Current Members that is open for inspection by any member or the representatives of the Election Commission of India.
- (b) Provisions for a periodic and democratic election of all the office bearers and the highest executive body by the members of the party.
- (c) Procedures for selection of party's candidates for elections to legislatures.
- (d) Procedures for deciding upon various policy documents including the party's election manifesto.
- (e) Internal mechanism to adjudicate any dispute, including those concerning the interpretation of the constitution.

The Election Commission shall review the constitutions for their compliance with the above mentioned requirements and also be a court of final appeal against any decision of the internal adjudicating authority in every party. The failure to comply with the EC's instructions or decisions will invite de-recognition of the party.

3. Measures to curb the influence of black money in politics.

- (a) Every candidate shall make a declaration of his/her income and property at the time of nomination. False or incomplete declaration shall invite disqualification.
- (b) All citizens and corporations shall be exempted, upto a certain limit, from paying income tax on donations made to registered political parties.
- (c) The candidates and political parties shall be required, after the completion of election, to file a detailed statement of account. Non-disclosure or false declaration should invite disqualification for candidate and de-registration for political parties.
- (d) While the current ceiling on electoral expenses needs to be removed, certain items of expenditure (direct inducements in cash or kind to the voter) shall be considered illegal.
- (e) Every candidate who secures 2% or more of the valid votes polled in a constituency shall be reimbursed @ Rs.10 for each vote secured.
- (f) It shall be compulsory for all registered political parties to get a statement of income and expenditure audited annually. The statement shall be a public document.

4. Measures to curb electoral mal-practices.

- (a) The local post-office shall be in-charge of maintaining and revising electoral rolls on a regular basis. At present most citizens have no access to electoral rolls and the procedure for additions, deletions and corrections is ineffective in reality, though the law is eminently sensible. There is evidence to suggest that in urban areas the electoral rolls are flawed to a time of up 40%.
- (b) It should be mandatory for the Election Commission to provide voters ID card to every citizen who figures on the electoral rolls. Once this process is completed, the voters ID card should be made compulsory for voting.
- (c) If the proportion of "tendered" votes in a polling booth is greater than 1 per cent of the total electorate, a repoll shall be ordered in the booth tendered ballot given to a person in whose name a false vote was already cast, and who establishes identity. Therefore, a tendered vote is the indisputable proof of personation and rigging. At present a tendered ballot is kept in a separate cover and is not counted, while the false vote cast is counted! If this provision is incorporated and publicized, people will then avail the facility of tendered vote, and rigging will be self-limiting for fear of a repoll.

PROVISIONS OF THE ALTERNATE BILL

A Bill To Amend The Representation of People's Act – 1951

New S.34

Notwithstanding anything contained in this act, every recognized political party shall nominate women candidates on behalf of that party, as nearly as may be in at least one third of the constituencies in which the party is contesting, in every general election.

Provided that for an election to Lok Sabha, the state shall be the unit for such nomination, and for an election to Legislative Assembly, a cluster of three parliamentary constituencies shall be the unit as nearly as may be.

Provided that for Lok Sabha election, in case of states with less than 3 seats, a cluster of states to be defined by the Election Commission shall be treated as a unit.

(For removal of any doubt, these provisions will apply in all states and union territories for recognized national parties, and in the respective state or state for recognized state parties)

Provided that in respect of seats reserved for scheduled castes and scheduled tribes, the State shall be the unit for nomination of women for all general elections; and 1/3 of all candidates nominated for the reserved constituencies shall be women.

Provided that in case of by-elections, the party shall nominate as nearly as may be one-third women candidates for the Lok Sabha and Legislative Assembly, with the nation as unit for Lok Sabha and State as unit for Legislative Assembly. Provided further that, in respect of State parties, this provision will apply for state as unit for Lok Sabha.

In the event of a recognized political party not complying with these provisions, for the shortfall of every woman candidate while nominating candidates for elective office, two male candidates of the party in the State or cluster of parliament constituencies, as the case maybe, as decided by the party shall be deemed to be Independent candidate for all purposes including allotment of symbols.

The Election Commission or the officials authorized by it at the state or union territory level shall determine the compliance or otherwise of these provisions after the completion of withdrawal of nominations.

Provided that the candidates so disqualified shall be from reserved vacancies in case the shortfall is in reserved vacancies.

Part B Constitution Amendment Bill

In the council of states, as nearly as maybe one-third of all seats whether elected or nominated shall be reserved for women.

In the states in which Legislative Councils Exist, as nearly as maybe, one-third of all seats filled from each category, whether elected or nominated, shall be reserved for women;

Provided that in case of members elected by members of local authorities, graduates, and teachers, the seats reserved for women shall be rotated, and decided by draw of lots.