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Women’s Reservation Act and its Unsettled Details

By: Rashmi Singh

The 2023 Women Power Reservation Act links reservation of seats to delimitation, which can be done only after a census is carried out. It also doesn't have a quota for the OBCs and will have to reckon with the apathy that has historically undermined the presence and role of women in Indian politics.

The Women's Reservation Bill, after six missed opportunities (between 1996 and 2010) to receive parliamentary approval, was finally passed by Parliament on 21 September and became an Act when it received the President's assent on 28 September 2023. Also referred to as the Constitution (One Hundred and Twenty-Eighth Amendment) Bill, 2023, it was suddenly brought to life by the ruling Bharatiya Janata Party (BJP) in a special session of the Parliament. By all indications, the long-awaited idea of women's reservation has been resuscitated by the BJP ahead of the 2024 elections.

The announcement of the Bill was an unexpected development, and while the issue of the women's reservation Bill had been raised by the Opposition parties during the first term of Prime Minister Narendra Modi's government (especially by Congress President Sonia Gandhi who had written to the prime minister to get it passed in the Lok Sabha). But it was not assumed to be on the cards when the special session of the Parliament was called.

The introduction of the Bill was carefully choreographed to mark the beginning of the special session and to signify the move to a new Parliament building. Many Opposition members of parliament (MPs) protested against the surprise announcement (they were only given two days to study the Bill), questioning whether a special session was required for what could have been a routine matter in a regular session of Parliament. But they seemed to miss the changed discourse around the Bill and its introduction.

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The Bill, renamed 'Nari Shakti Vandan Adhiniyam', marks a departure from the sedate vocabulary of women's reservation and the empowerment to the assertive and culturally reified identity of 'women power' or 'nari shakti'. This cultural conception has been historically favoured by right-wing organisations to define (and to constrain) the cultural and political scope of women's roles in both the organization and society at large.

As the special session was made to coincide with Vinayaka Chaturthi, Home Minister Amit Shah in his speech in Hindi remarked, "Yesterday was Ganesh Chaturthi. We inaugurated the new parliament through the blessing of Ganesh and on this same day we introduced the Bill that would guarantee reservation to them" (translated from Hindi). The objectives of the new Bill stressed the present government's efforts to build nari shakti (women power), but, unlike in previous versions, it refers to earlier efforts towards this only in passing.

The issue of women's reservation has been thereby portrayed as the last knot or remaining obstruction in the imagination of a new India, which was seemingly overdue and in need of the BJP's strong push to get it going. The message was clear—by introducing the Bill as a surprise, the party could claim authorship and assert that it has rescued the issue from the inaction of previous governments, as the Bill gathered dust for 27 years.

As the prime minister spoke about restoring the malikana haq (ownership rights) of women to the country's history, he used the occasion to acknowledge women's efforts in nation-building as Parliament moved from the old building to a new one. Visuals of the BJP's supporters and women members expressing their gratitude to the prime minister and the party appeared in mass media as a spontaneous outpouring of gratitude. And there was the seemingly impromptu appearance of Bollywood actors in the new Parliament hall to celebrate the achievement as a "dream fulfilled" for India's women.

The Bill's objectives and its introduction have effectively positioned India's women as recipients of the party's largesse, and its enactment as a special blessing emanating from the prime minister's vision for the country. Women's activists argued that what was omitted was as important as what had been included, including the overlooking of the rich debates between feminists and activists in

the 1990s on the best course of implementation and the alternative designs of the Bill, as well as the aspirations of women MPs around its passage. Such amnesia has erased the many decades of effort by women’s organisations of different parties to get the Bill introduced, including their significant opposition to earlier versions of it that favoured the nomination of women instead of electing them. The pioneering efforts of women MPs such as [Geeta Mukherjee](#), who were instrumental in getting the first draft of the Bill presented in 1996, also cannot be forgotten. The collective struggle around the Bill has been thereby forgotten as have some of the very genuine differences around its most acceptable mechanism of implementation.

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This was made clear also by the Congress party, when Sonia Gandhi arrived in Parliament for the session, and remarked, “It is ours, apna hai,” as social media handles of the Congress asserted that the Bill’s passing was a fulfilment of Rajiv Gandhi’s dream and attempted to credit the party’s efforts over decades to get it passed. The BJP was quick to react. Union Minister Smriti Irani called it an attempt to take ownership of the BJP’s success, reiterating that it was the prime minister’s personal will that had been instrumental in getting women their due.

The details and provisions of the new Act have been as controversial as its introduction. In its new form, the Act has introduced reservations for women for 15 years with no rotation. Seats reserved for women will be rotated after each delimitation, as determined by a law made by Parliament. This is in contrast to the 2005 Bill that included a rotation of seats every five years. In a way, this can be considered an improvement because it will give women MPs the freedom to work in their constituencies without the fear of being replaced in the next election. It could also encourage more experienced women to contest elections and encourage competition among women candidates.

The second and more significant difference from the previous Bills is linking women’s reservation to the delimitation exercise (or what is elsewhere referred to as “redistricting” or the redrawing of constituency boundaries). The delimitation is unlikely to happen before 2031—depending on when the next census is completed and whether the commission can use its report for redrawing constituency boundaries. This puts a question mark on the exact timeline of the Act’s implementation and pushes the horizon to an indefinite date. [Yogendra Yadav has pointed out](#) that this could be as late as 2039 because the delimitation exercise is suspended until the updated census numbers are available. The updated population distribution will be used to determine the number of new seats and the allocation of reserved seats against the total number.

According to the new Act, the reservations for women include the sub-quota of 33% reservations for the Scheduled Castes (SC) and Scheduled Tribes (ST), which have been granted under Article 330 of the Constitution. The Act provides for women’s reservation by inserting Article 330A, which places these reservations under the ambit of the previous law. As the allocation of SC/ST seats is under the purview of the Delimitation Commission, this also necessitates a review of women’s reservation by the same body. Similarly, women’s reservation in state legislatures has been introduced under Article 332A, while Article 332 is the provision under which SC/ST general seats are reserved. In both cases, the implementation of women’s reservation will be subject to the same delimitation process as SC/ST reservations as it is a pre-requisite for the earlier reservations.

The Opposition believes that instead of working towards immediate implementation, the BJP has offered a post-dated cheque (also derided as the ‘check-bounce bill’ by AIMIM), and created an optical illusion instead of a sure pathway for the Act to come into force.

The 2005 Bill also proposed bringing in women’s reservation through amendments to Articles 330, 331, 332, 334, and so on in exactly the same way, but it did not mention delimitation as a condition for implementation. The 2023 Act specifically mentions that women’s reservation will commence after the first delimitation exercise post the Act’s passing. The insertion of this condition has become a bone of contention between the ruling party and the Opposition.

The Opposition believes that instead of working towards immediate implementation, the BJP has offered a [post-dated cheque](#) to create an optical illusion. The Act was also derided as a “[check-bounce bill](#)” by the All India Majlis-E-Ittehadul Muslimeen (AIMIM). However, given that women’s reservation has been introduced as a vertical quota under Articles 330 and 332, the oversight of the Delimitation Commission may be necessary for its eventual implementation. Since the earlier Bills were not passed, the nature of their exact implementation and timeline was not clear and the question of delimitation did not come up.

The Opposition and legal experts have observed that while the role of the Delimitation Commission may be salient, the constituencies are already demarked in accordance with the 2011 census and they could easily have been allocated for the 2024 election [instead of waiting for the next delimitation exercise](#). This could have been done through a lottery of the kind used to allocate reserved seats for local and urban bodies.

The government has defended its position by saying that the Delimitation Commission will ensure that the reserved seats are allocated in a transparent manner. Finance Minister Nirmala Sitharaman said that the Bill could be implemented only if a “[quasi-judicial](#)” process is adopted. The Home Minister, taking a veiled dig at Rahul Gandhi and the AIMIM, remarked that this would ensure that everything was done in a transparent manner by the delimitation body rather than being misread as a ploy of the government, including if Wayanad and Hyderabad happened to become constituencies reserved for women (both considered safe seats for the aforementioned). While the arguments of the government hold given the contentious nature of boundary mapping for seats, it remains the case that the deadlock stems from the surprise introduction and passage of the 2023 Bill with no all-party discussion held beforehand on whether it was feasible to have women’s reservations implemented for the next general elections. The surprise introduction and the manner of enactment of the new legislation has made any determinable or detailed discussion impossible, leaving many unresolved open ends up for speculation.

The second glaring omission is that the Act does not have a quota for Other Backward Classes (OBCs). As the chequered history of the Bill shows, this has been the foremost demand of state parties such as the Rashtriya Janata Dal (RJD), Janata Dal (United) [JD(U)], Samajwadi Party (SP), and the like. They have raised the legitimate possibility that the women’s reservation could be used to ensure upper-caste interests are protected. Without an OBC or economically backward class (EBC) sub-quota, they allege that the Act will mainly support the election of upper-caste women.

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The Congress urged the government to include an OBC quota in the Act. But, as commentators have pointed out, the same party did not take up the sub-quota issue in 2010 when an earlier Bill was passed in the Rajya Sabha. Rahul Gandhi in a press conference admitted that in retrospect it was a [regrettable mistake](#). Uma Bharti, a senior BJP leader who strongly supported this demand in earlier debates on the Bill, reiterated the need for an OBC sub-quota. She said she was disappointed with the 2023 Act’s omission and had expected her party to [give backward caste women their due](#). Though articulating their demand for a sub-quota, the regional parties have taken a [more pragmatic position](#) this time and appeared united to support the new Bill.

While the Opposition was almost united in this demand, saying the Act was incomplete without sub-quotas for OBCs and Muslim women, previous debates on these subjects have not yielded much ground . The views expressed by different parties to the parliamentary standing committee on the 1996 Bill, for instance, showed that opinions diverged widely among them. The question is if the sub-quota for women can be implemented without first amending the Constitution to permit OBC reservations in the legislature, for which a percentage cannot be fixed without clarity on their numbers nationally. This is also the case at the state level, where efforts by states such as Madhya Pradesh and Maharashtra to institute such a quota have run into an impasse with [courts striking down](#) their efforts citing lack of reliable data.

Legal wrangles aside, the issue of a separate sub-quota for OBC women has not been consistently highlighted by political parties in the country. They have also made no serious efforts to nominate a greater number of women from these castes. The overall OBC representation in Parliament remains only [around 20%](#). The BJP, in its response to the Opposition, claimed that [29% of its MPs](#) are from the OBC castes.

There are no reliable indicators of how the percentage of women legislators from these castes have increased or decreased since independence, with regional parties such as the RJD and SP not having made any serious efforts to nominate more women from within their ranks. For instance, while Bihar has the highest proportion of OBCs among the states, in the 2020 Assembly elections, the RJD-led alliance only nominated women to [10% of all the seats](#) it contested. This lack of representation, both of OBC and Muslim women (who are currently only 0.7% in Parliament), is a serious issue that needs to be addressed by all parties.

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Ultimately, the reservations about the Act and the problems highlighted by the debates around it lead back to the political parties in the country and the lack of progress they have made in recruiting women and encouraging them to run for elections. It is imperative to have reservations in Parliament because the parties themselves have not shown the resolve to field more women candidates or to support the demand for sub-quotas without which they are unlikely to nominate women from diverse groups or push for inter-sectional representation on their own. If the [increasing number of women contesting elections as independents](#) is any indication (who continue to nominate themselves for elections despite the surety of forfeiting their election deposits), this is an opportunity Indian political parties are missing.

National parties such as the Congress and the BJP have both instituted internal quotas for women in party organisations and executive bodies, but this has not translated into a greater proportion of them contesting elections - [this underlines the gatekeeping by party leaderships](#) in curtailing the number of women being nominated to contest. Researchers have also demonstrated how a large proportion of winning women candidates in the last three decades have been nominated by parties to SC and ST reserved seats. As the pressure on parties to nominate more women has increased, they have (whether strategically or not) [responded by nominating female candidates](#) at the cost of their SC and ST men. Another indication of the lack of political will is that though women's reservations were introduced at the local and municipal levels since 1993, there has been no noticeable upward mobility of women at either the state or national levels.

The hostility, opposition, and even violence that have been directed at women panchayat members who come [from marginalised castes is well recorded](#). It is symptomatic of the casteism and misogyny directed towards all women in power. The sexist comments made towards women legislators reflect their continuing exclusion and the lack of regard shown to them by male politicians.

The 2023 women's reservation Act in its new iteration as an ode to 'nari shakti' will need to reckon with the apathy that has historically undermined women and their presence in Indian politics. When implemented, it will be interesting to see if political parties accept it without trying to undermine its potential. If honestly implemented with a clear timeline, it could interact with India's democratic potential and open up political opportunities for women from different backgrounds, which could surprise us all.

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