

Legislative Brief

The Constitution (One Hundred and Eighth Amendment) Bill, 2008

The Bill was introduced in the Rajya Sabha on May 6, 2008.

The Bill has been referred to the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice (Chairperson: Dr E.M. Sudarsana Natchiappan), which is scheduled to submit its report by October 6, 2008.

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Highlights of the Bill

- ◆ The Constitution (One Hundred and Eighth Amendment) Bill, 2008 seeks to reserve one-third of all seats for women in the Lok Sabha and the state legislative assemblies. The allocation of reserved seats shall be determined by such authority as prescribed by Parliament.
- ◆ One third of the total number of seats reserved for Scheduled Castes and Scheduled Tribes shall be reserved for women of those groups in the Lok Sabha and the legislative assemblies.
- ◆ Reserved seats may be allotted by rotation to different constituencies in the state or union territory.
- ◆ Reservation of seats for women shall cease to exist 15 years after the commencement of this Amendment Act.

Key Issues and Analysis

- ◆ There are divergent views on the reservation policy. Proponents stress the necessity of affirmative action to improve the condition of women. Some recent studies on panchayats have shown the positive effect of reservation on empowerment of women and on allocation of resources.
- ◆ Opponents argue that it would perpetuate the unequal status of women since they would not be perceived to be competing on merit. They also contend that this policy diverts attention from the larger issues of electoral reform such as criminalisation of politics and inner party democracy.
- ◆ Reservation of seats in Parliament restricts choice of voters to women candidates. Therefore, some experts have suggested alternate methods such as reservation in political parties and dual member constituencies.
- ◆ Rotation of reserved constituencies in every election may reduce the incentive for an MP to work for his constituency as he may be ineligible to seek re-election from that constituency.
- ◆ The report examining the 1996 women's reservation Bill recommended that reservation be provided for women of Other Backward Classes (OBCs) once the Constitution was amended to allow for reservation for OBCs. It also recommended that reservation be extended to the Rajya Sabha and the Legislative Councils. Neither of these recommendations has been incorporated in the Bill.

PART A: HIGHLIGHTS OF THE BILL¹

Context

The 73rd and 74th Amendments passed in 1993, which introduced panchayats and municipalities in the Constitution, reserve one-third of seats for women in these bodies. The Constitution also provides for reservation of seats in Lok Sabha and state legislative assemblies for scheduled castes and scheduled tribes in proportion to their number in the population. The Constitution makes no provision for reserving seats for women in Parliament and the state legislatures. Currently, women constitute 9% of the Lok Sabha, 10% of the Rajya Sabha and 7% of the state legislative assemblies.²

During the framing of the Constitution, some women members argued against reservation for women.³ In 1974, the Report of the Committee on Status of Women highlighted the low number of women in political bodies and recommended that seats be reserved for women in panchayats and municipal bodies.⁴ Two dissenting members of the Committee supported reservation of seats in all legislative bodies.⁵ The National Perspective Plan for Women (1988) recommended a quota of 30% in panchayats, municipalities and political parties.⁶ The National Policy for Empowerment of Women (2001) stated that reservation shall be considered in higher legislative bodies.⁷ The United Progressive Alliance's National Common Minimum Programme includes reservation of one-third of seats in Parliament for women.⁸ In 1996, 1998 and 1999, Constitution Amendment Bills were introduced to reserve seats for women in Parliament and state legislative assemblies. The 1996 Bill was examined by a Joint Committee of Parliament. All three Bills lapsed with the dissolution of their respective Lok Sabhas.

The Constitution (One Hundred and Eighth Amendment) Bill, 2008 was introduced in the Rajya Sabha. It seeks to reserve one-third of total number of seats for women in the Lok Sabha and in each state legislative assembly.

Key Features

- The Bill seeks to reserve, as nearly as possible, one-third of all seats for women in the Lok Sabha and the state legislative assemblies (including Delhi). The allocation of reserved seats shall be determined by such authority as prescribed by Parliament.
- As nearly as possible, one third of the total number of seats reserved for Scheduled Caste/Scheduled Tribes (SC/ST) in the Lok Sabha and the legislative assemblies shall be reserved for SC/ST women.
- Reservation of seats for women shall cease to exist 15 years after the commencement of the Act.

Lok Sabha

- Reserved seats may be allotted by rotation to different constituencies in the state or union territory. If a state or union territory has only one seat in the Lok Sabha, that seat shall be reserved for women in the first general election of every cycle of three elections. If there are two seats, each shall be reserved once in a cycle of three elections. Similar rules apply for seats reserved for SC/STs. Of the two seats in the Lok Sabha reserved for Anglo Indians, one will be reserved for women in each of the two elections in a cycle of three elections.

Legislative Assemblies

- The Bill reserves one-third of all seats in the legislative assemblies that are to be filled by direct election for women. Such seats may be allotted by rotation to different constituencies in the state. For SC/ST seats, similar rules as those for the Lok Sabha apply.

PART B: KEY ISSUES AND ANALYSIS

The issue of reservation of seats for women in Parliament can be examined from three perspectives (a) whether the policy of reservation for women act as an effective instrument for empowerment (as stated in the Statement of Objects and Reasons of the Bill); (b) whether alternate methods of increasing representation of women in Parliament are feasible; and (c) whether issues in the Bill need to be examined.

Purpose of reservation

The proponents of the policy of reservation state that although equality of the sexes is enshrined in the Constitution, it is not the reality. Therefore, vigorous affirmative action is required to improve the condition of women.⁵ Also, there is evidence that political reservation has increased redistribution of resources in favour of the groups which benefit from reservation.⁹ A study about the effect of reservation for women in panchayats shows that women elected under the reservation policy invest more in the public goods closely linked to women's concerns.¹⁰ A 2008 study, commissioned

by the Ministry of Panchayati Raj, reveals that a sizeable proportion of women representatives perceive an enhancement in their self-esteem, confidence and decision-making ability.¹¹

Some opponents argue that separate constituencies for women would not only narrow their outlook but lead to perpetuation of unequal status because they would be seen as not competing on merit. For instance, in the Constituent Assembly, Mrs Renuka Ray argued against reserving seats for women: “When there is reservation of seats for women, the question of their consideration for general seats, however competent they may be, does not usually arise. We feel that women will get more chances if the consideration is of ability alone.”¹² Opponents also contend that reservation would not lead to political empowerment of women because (a) larger issues of electoral reforms such as measures to check criminalisation of politics, internal democracy in political parties, influence of black money, etc. have not been addressed,¹³ and (b) it could lead to election of “proxies” or relatives of male candidates.¹⁴

Alternate methods of representation

Reservation of one-third of seats for women in Parliament restricts the choice of voters in the reserved constituencies.¹⁵

Two alternatives have been suggested by some experts: reservation for candidates within political parties (as some countries do, see Table 1); and dual member constituencies where some constituencies shall have two candidates, one being a woman (see Table 2).

Initially, India had multi-member constituencies which included an SC/ST member. A 1961 Act converted all constituencies into single member constituencies.¹⁶ The reasoning was that the constituencies were too large and SC/ST members felt that they would gain in importance in single-member reserved constituencies.¹⁷

Table 1: Country data on political representation of women

| | % of elected women | Quota in Parliament | Quota in political parties* |
|----------------|--------------------|---------------------|-----------------------------|
| Sweden | 47 (2006) | No | Yes |
| Argentina | 40 (2007) | Yes | Yes |
| Norway | 36 (2005) | No | Yes |
| Canada | 24 (2006) | No | Yes |
| Pakistan | 21 (2008) | Yes | No |
| United Kingdom | 20 (2005) | No | Yes |
| France | 18 (2007) | No | Yes |
| USA | 17 (2006) | No | No |
| Sri Lanka | 6 (2004) | No | No |

Sources: Global Database of Quotas for Women, International IDEA and Stockholm University and Inter Parliamentary Union (<http://www.ipu.org/wmn-e/classif.htm>).

* In several countries, there is no law mandating quotas for women but some political parties reserve seats for women.

Table 2: Pros and cons of reservation in political parties and dual member constituencies

| | Advantages | Disadvantages |
|----------------------------|--|--|
| Political parties | <ul style="list-style-type: none"> Provide more democratic choice to voters Allow more flexibility to parties to choose candidates and constituencies depending on local political and social factors Can nominate women from minority communities in areas where this will be an electoral advantage Allow flexibility in the number of women in Parliament | <ul style="list-style-type: none"> No guarantee that a significant number of women would get elected Political parties may assign women candidates to constituencies where they are weak Might lead to resentment if a woman is accommodated to the disadvantage of a stronger male candidate |
| Dual-member constituencies | <ul style="list-style-type: none"> Does not decrease the democratic choice for voters Does not discriminate against male candidates Might make it easier for members to nurture constituencies whose average size is about 2 million people | <ul style="list-style-type: none"> Sitting members may have to share their political base Women may become secondary persons or add-ons To fulfil criteria of 33% women, half of the seats need to be dual constituencies. This would increase the total number of MPs by 50%, which could make deliberation in Parliament more difficult |

Compiled by PRS based on sources listed in endnotes 13 and 18.

Rotating constituencies

Clause 5

The Bill states that reserved seats shall be allotted by rotation to different constituencies in the state or union territory. Rotation of reserved seats may reduce the incentive for an MP to work for his constituency as he could be ineligible to seek re-election from that constituency.¹⁹ A study by Ministry of Panchayati Raj recommended that rotation of constituencies should be discontinued at the panchayat level because almost 85% women were first-timers and only 15% women could get re-elected because the seats they were elected from were de-reserved.

Key Recommendations of Joint Parliamentary Committee

A similar Bill was introduced in 1996, and examined by a Joint Committee on the Constitution (Eighty First Amendment) Bill, 1996 (Chairperson: Smt Geeta Mukherjee). Whereas many of its recommendations have been included in the current Bill, recommendations on reservations for OBCs and in the upper Houses have not been included.

Table 3: Key recommendations of the Joint Committee on the 1996 Bill and provisions of the 2008 Bill

| Key Recommendations of Joint Committee on the Constitution (81 st Amendment) Bill, 1996 | 2008 Bill |
|---|-------------------------------|
| Reservation should be extended to Rajya Sabha and the Legislative Councils. | No |
| The reservation should be extended in the first instance for 15 years then reviewed to decide whether it should be continued. | Yes (no provision for review) |
| Reservation should be provided for women from Other Backward Classes after the Constitution extends reservation to OBCs. | No |
| Reservation to be extended to women of the Anglo-Indian community. | Yes |
| Provision should be made to reserve seats in cases where a state has less than three seats in the Lok Sabha or less than three seats are reserved for SC/STs. | Yes |
| Legislative Assembly of Delhi should be included. (Reservation in Puducherry Assembly requires only an ordinary Act). | Yes |
| Substitute the words 'not less than one-third' with 'as nearly as may be, one-third'. | Yes |

Sources: Report of the Joint Committee on the Constitution (Eighty First Amendment) Bill, 1996, December 9, 1996; PRS.

Notes

1. This Brief has been written on the basis of the Constitution (One Hundred and Eighth Amendment) Bill, 2008, which was introduced in the Rajya Sabha on May 6, 2008. The Bill has been referred to the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice (Chairperson: Shri E.M. Sudarsana Natchiappan), which is scheduled to submit its report within three months.
2. Computed by PRS based on data available on Parliament and Election Commission of India websites.
3. Memorandum on Minorities by Rajkumari Amrit Kaur, March 20, 1947 and Report of the Provincial Constitution Committee, June-July 1947, *The Framing of India's Constitution: Select Documents*, (ed) B. Shiva Rao, 1967; and 18th July, 1947, *Constituent Assembly Debates (Proceedings) Volume IV*.
4. "Towards Equality: Report of the Commission on the Status of Women in India" (Chairperson: Smt Phulrenu Guha), Ministry of Education and Social Welfare, Department of Social Welfare, Government of India, 1974.
5. The dissenting members were Lotika Sarkar and Vina Mazumdar.
6. National Perspective Plan for Women – 1988-2000, Report of the Core Group set up by the Department of Women and Child Development, Ministry of Human Resource Development, Government of India, 1988.
7. National Policy for Empowerment of Women, 2001, Department of Women and Child Development, Ministry of Human Resource Development, Government of India.
8. National Common Minimum Programme of the Government of India, May 2004 (<http://pmindia.nic.in/cmp.pdf>).
9. "Can Mandated Political Representation Increase Policy Influence for Disadvantaged Minorities? Theory and Evidence from India," Rohini Pande, *The American Economic Review*, Vol. 93, No. 4, Nov. 2003.
10. "Women as Policy Makers: Evidence from a Randomised Policy Experiment in India," Raghavendra Chattopadhyay and Esther Duflo, *Econometrica*, Vol. 72, No. 5, Sept 2004 and "Women Politicians, Gender Bias, and Policy-making in Rural India," Lori Beaman, Esther Duflo, Rohini Pande, Petia Topalova, Background Paper for UNICEF, Dec 2006.
11. Study on Elected Women Representatives in Panchayati Raj Institutions, Ministry of Panchayati Raj, Govt of India, April 2008.
12. 18th July, 1947, *Constituent Assembly Debates (Proceedings) Volume IV*
13. "Enhancing Women's Representation in Legislatures: An Alternative to the Government Bill for Women's Representation," Forum for Democratic Reforms – Dr Jayaprakash Narayan, Dhirubhai Sheth, Yogendra Yadav, Madhu Kishwar, Manushi, Issue 116.
14. "The Logic of Quotas: Women's Movement Splits on the Reservation Bill," Madhu Kishwar, Manushi, Issue No. 107.
15. "Using Quotas to Increase Women's Political Representation," Drude Dahlerup (1998), in Azza Karam, etc. *Women in Parliament: Beyond Numbers*. Stockholm: International IDEA.
16. The Two-Member Constituencies (Abolition) Act, 1961.
17. *India's Living Constitution: Ideas, Practices, Controversies*, ed. by Zoya Hasan, E. Sridharan, R. Sudarshan, Anthem Press, 2005.
18. "Do a double take on women's quota," Rami Chhabra, *Indian Express*, Aug 8, 2003; "Women's Reservation: Another Approach," Mukesh Dalal, Manushi, Issue no. 120; "Alternative as Dilution," Brinda Karat, *Outlook*, May 17, 2003; "Role of Women in Legislature," Report of Joint Session by National Commission for Women and Parliamentary Committee on the Empowerment of Women, Aug 21, 2003; and *Reservation of Seats for Women in Legislative Bodies: Perspectives*, Occasional Paper Series, Rajya Sabha Secretariat, July 2008.
19. "Dual-Member Constituencies: Resolving Deadlock on Women's Reservation," Medha Nanivadekar, *Economic and Political Weekly*, October 25, 2003.

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