



An Analysis of The Nari Shakti Vandan Adhiniyam Bill 2023: Paving the Way for Women's Empowerment in Legislation

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Abstract

This research paper would examine the Nari Shakti Vandan Adhiniyam 2023, a legislative framework purportedly designed to celebrate and empower women in India. The analysis delves into the various provisions of the Adhiniyam, assessing its efficacy in addressing the multifaceted challenges faced by women in the country. The paper scrutinizes the legislative text, focusing on potential loopholes, ambiguities, and unintended consequences that may hinder its intended positive impact. Furthermore, it explores the broader socio-cultural context in which the Adhiniyam operates, evaluating its alignment with contemporary gender justice movements and international standards. Through a comprehensive review, the paper aims to contribute to the ongoing discourse on women's rights and empowerment by offering insights into the strengths and weaknesses of the Nari Shakti Vandan Adhiniyam 2023.

Keywords: *Nari Shakti Vandan Adhiniyam, Women Empowerment, Women & Gender Justice.*

Introduction

The Nari Shakti Vandan Adhiniyam 2023, colloquially referred to as the Women's Reservation Bill 2023, which cleared the Lok Sabha on 20th September, 2023 but after more than 25 years it was originally introduced in Parliament on September 12, 1996, (the tenure of Former Prime Minister Shri Atal Bihari Vajpayee) then others in 1998, 1999, 2002, 2003, 2008 & now. At the time of the bill's passage, about 14 per cent of Lok Sabha legislators were women. While that represents India's highest proportion since its independence, it was far below the global average of 26.5 per cent, or the Central and Southern Asia average of 19 per cent.[†] Among the state legislative assemblies, Chhattisgarh has the highest level of women

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[†]UN-Women.org; *India passes law to reserve seats for women legislators* 4th Oct2023 or click <https://www.unwomen.org/en/news-stories/feature-story/2023/10/india-passes-law-to-reserve-seats-for-women-legislators> last accessed on 12th Dec 2023.

legislators, at 18 per cent, while Himachal Pradesh has just one woman legislator and Mizoram has none.[‡]

In the state legislative assembly in Assam the proportion of women MLAs has hovered anywhere between 1% and 5% for 50 years between 1952 and 2001. In some years, such as 1957 and 1978, only one woman was elected to the state assembly. 2011 saw the highest number of women MLAs, when 14 women were elected that year. Thereafter, the number of women elected has been on a constant decline, with the lowest number elected in 2021.[§] Such numbers reinforce the stark truth that without reservation, women would not get adequate representation in our political system. The passage of the Women's Reservation Bill in both houses of Parliament indicates that sometime in future a third of representatives in the Lok-Sabha, the Rajya Sabha and the State Assemblies in the World's most populated democracy will be women. This is a step forward.

Objectives of the Study

- a) To examine the legislative intent behind the Nari Shakti Vandan Adhiniyam 2023.
- b) To understand the specific goals and objectives of the Bill for empowering women.
- c) Evaluate the legal implications and potential impact on women's empowerment.
- d) Identify any potential challenges in the bill that may hinder its implementation.

Key Features of the Nari Shakti Vandan Adhiniyam Bill

Reservation for Women in Lower House:

- A). The Bill provided for inserting Article 330A to the constitution, which borrows from the provisions of Article 330, which provides for reservation of seats to SCs/STs in the Lok Sabha.
 - a. The Bill provided that reserved seats for women may be allotted by rotation to different constituencies in states or Union Territories.
 - b. In the seats reserved for SCs/STs, the Bill sought to provide one-third of the seats to be reserved for women on rotational basis.
- B). Reservation for Women in State Legislative Assemblies
 - a. The Bill introduces Article 332A, which mandates the reservation of seats for women in every state Legislative Assembly. Additionally, one-third of the seats reserved for SCs and STs must be allocated for women, and one-third of the total seats filled through direct elections to the Legislative Assemblies shall also be reserved for women.
- C). Reservation for Women in NCT of Delhi (New clause in 239AA)
 - a. Article 239AA to the constitution grants special status to the Union Territory of Delhi as national capital with regards to its administrative and legislative functioning.

[‡]*Ibid.*

[§]Women in Politics; Sanskrita Bharadwaj, May 11 2021; *Women's Political Representation In Assam Slips To Its Lowest In 20 Years* or click <https://behanbox.com/2021/05/11/womens-political-representation-in-assam-slips-to-its-lowest-in-20-years/> last accessed on 13th Dec, 2023.

- b. Article 239AA(2)(b) was amended by the bill accordingly to add that the laws framed by parliament shall apply to the National Capital territory of Delhi.
- D). Commencement of Reservation (New article - 334A)
- a. The reservation will be effective after the census conducted after the commencement of this Bill has been published. Based on the census delimitation will be undertaken to reserve seats for women.
 - b. The reservation will be provided for a period of 15 years. However, it shall continue till such date as determined by a law made by Parliament.
- E). Rotation of Seats
- a. Seats reserved for women will be rotated after each delimitation, as determined by a law made by Parliament.

Why Nari Shakti Vandan Adhiniyam 2023 is in the News

This proposed legislative endeavour, which harbours the ambitious objective of earmarking one-third of parliamentary and state legislative seats for women, symbolizes a momentous leap towards the attainment of gender parity within the intricate sphere of Indian politics. By reserving seats for women, it intends to address the glaring gender disparity that has historically marred the political landscape of India. With the increasing realization that women have an indispensable role to play in governance, many laud this bill as a necessary corrective measure to balance the scales of political power. The proposed bill has not only attained heightened prominence but has also garnered unwavering support, being championed by a chorus of political dignitaries and ardent activists who consider it an overdue and indispensable step in bolstering the status of women and engendering a political framework that is truly inclusive and reflective of the multifaceted Indian population.

Therefore an analysis of the Women's Reservation Bill 2023, examining the various arguments both in favour and against is crucial. This examination shall be drawn from the thoughtful insights of prominent thinkers, leaders, and visionaries who have jealously contributed to the discourse surrounding the vital issue of women's representation in the political echelons of the nation. The one important question that needs to be raised is whether implementing a system where one-third of seats are reserved through rotation will effectively alter the prevailing male-dominated mindset in politics? Additionally, it's important to consider whether women who run for office from these reserved seats will have the opportunity to effectively develop and serve their constituencies, given that they may lose their seats in the subsequent election. A critical concern is whether such a bill might inadvertently create competition among women in these reserved constituencies, potentially transforming political contests into what might be viewed as a 'ladies compartment' battle. This could lead to a situation where women are fighting amongst themselves, while the ultimate beneficiaries of political power remain predominantly male.**

Women under International Law

**Sagarika Ghose, This Doesn't Fit The Bill, *The Times of India*, Sept, 2023 or click <https://timesofindia.indiatimes.com/india/this-doesnt-fit-the-bill/articleshow/103815897.cms?from=mdr> last accessed on 12th Dec, 2023.

Women's rights under international law have evolved significantly over the years, with various conventions, treaties, and declarations aimed at promoting gender equality, eliminating discrimination, and protecting women's human rights.^{††} The Supreme Court in *Keshavananda Bharti v State of Kerala*,^{‡‡} observed that the Universal Declaration of Human Rights, 1948 may not be a legally binding instrument but it shows how India understood the nature of Human Rights at the time the Constitution was adopted. Thereafter, on several occasions the Supreme Court clarified that a number of Indian Constitutional provisions are similar to the provisions contained in the Declaration and the Provisions of Declaration can be referred while constructing judicial pronouncement and interpreting the Indian Constitutional provisions.^{§§} This is true with all the other international instruments.^{***} All these instruments, recognize the equal rights of men and women to enjoy civil, political, economic, social, and cultural rights without discrimination.

Status of Global Gender Equality

The World Economic Forum has recently published its 17th Global Gender Gap Report, using data from 146 countries but maintaining a consistent sample of 102 countries over time for comparative analysis. The report's findings indicate that at the current pace of progress, it will take about 131 years to eliminate the global gender gap completely. Notably, the top nine countries featured in this year's report have made significant advancements, achieving over 80% gender parity. Iceland, in particular, stands out as the leader, ranking first for the 14th consecutive time and being the sole nation to attain over 90% gender equality.^{†††} The top ten of the report is largely dominated by seven countries, including four from the Nordic region such as Iceland, Norway, Finland, and Sweden. When examining trends over time, the report predicts that it will take approximately 162 years to close the gender gap in Political Empowerment, 169 years for Economic Participation and Opportunity, and 16 years for Educational Attainment. The gender gap in Health and Survival remains undefined. Compared to the previous year's report, there is more widespread progress towards gender equality, with 42 out of the 145 economies covered in both the 2022 and 2023 editions showing at least a one percentage point improvement in their gender parity scores.^{‡‡‡}

^{††}The Universal Declaration of Human Rights, 1948; Convention on the Political Rights of Women, 1953; Convention on the Elimination on the Elimination of All Forms of Discrimination Against Women, 1979; Declaration on the Elimination of Violence Against Women, 1993; Optional Protocol to the Convention on the Elimination of Discrimination Against Women, 1999; The Vienna World Conference 1993; The Beijing Conference 1995.

^{‡‡}AIR 1973 SC 1461.

^{§§}Tripathi, S. C., & Arora, V. (2006). *Law relating to Women and Children*. Central Law Publications, p. 356.

^{***}*Ibid*, pp. 356-361.

^{†††}Global Gender Gap Report 2023, or click

[https://www.weforum.org/publications/global-gender-gap-report-2023/in-full/benchmarking-gender-gaps-](https://www.weforum.org/publications/global-gender-gap-report-2023/in-full/benchmarking-gender-gaps-2023/#:~:text=The%20Global%20Gender%20Gap%20score,compared%20to%20last%20year's%20edition)

[2023/#:~:text=The%20Global%20Gender%20Gap%20score,compared%20to%20last%20year's%20edition](https://www.weforum.org/publications/global-gender-gap-report-2023/in-full/benchmarking-gender-gaps-2023/#:~:text=The%20Global%20Gender%20Gap%20score,compared%20to%20last%20year's%20edition)

as accessed on 17th Dec, 2023.

^{‡‡‡}*ibid*

The report divides countries into eight regions, revealing that Europe has now exceeded North America in terms of gender parity, with Europe achieving a gender parity score of 76.3% compared to North America's 75%. The Latin America and the Caribbean region closely follows with a score of 74.3%, while Sub-Saharan Africa ranks sixth with 68.2% gender parity. Southern Asia (63.4%) surpasses the Middle East and North Africa (62.6%), which remains the region farthest from gender parity in the 2023 report. When looking at economic disparities, the report notes that women make up about 41.9% of the global workforce but hold only 32.2% of senior leadership positions. Certain industries, such as consumer services, retail, and education, are doing well in terms of gender representation in leadership roles, with figures ranging from 64% to 68%. On the other hand, sectors like construction, financial services, and real estate have lower representation, with less than 50% of women holding C-suite positions.^{§§§}

In the realm of political representation, there has been progress since 2013, with the global percentage of women parliamentarians reaching 22.9%. Some countries, like Iceland and Costa Rica, have achieved more than 33% representation, while others, such as Canada and Japan, are falling short, with less than one-third of their parliamentarians being women.

The report also sheds light on the situation in Southern Asia, where progress has been slower, but countries with large populations like India, Pakistan, and Bangladesh have shown some improvement. Nevertheless, the overall region is expected to require approximately 149 years to achieve gender parity.^{****}

India, in particular, has made partial progress, closing 64.3% of the gender gap and ranking 127th out of 146 countries. While there has been an improvement in wage and income parity, there has been a slight decline in the representation of women in senior positions and technical roles. India's political representation stands at 25.3%, with women accounting for 15.1% of parliamentarians, the highest level recorded since the report's inception in 2006.^{††††}

Based on these discoveries, the report highlights the pressing need for ongoing initiatives to advance global gender equality. It emphasizes that gender inequalities are deeply ingrained and demand persistent dedication from governments, institutions, and individuals to narrow the divide. Although achieving gender equality may be a lengthy and arduous journey, it is a journey that holds immense value for the improvement of societies across the globe.

Creating Spaces of Respect: A Deeper Look into Women's Desires and Needs

Despite the growing number of Women acquiring professional degrees, they remain under-represented and almost invisible when it comes to top leadership positions or decision-making roles.^{####} While women have proved beyond doubts that they are just as talented and

^{§§§}*Ibid.*

^{****}*Ibid.*

^{††††}*Ibid.*

^{####}Bhogle, A. (2022). *Equal, Yet Different: Career Catalysts for the Professional Woman*. Penguin Random House India Private Limited.

capable as men, they are still held back by expectations laid down by society and largely unconscious bias on the part of colleagues and family members. Besides grappling with external challenges, women find that their own mind-sets are also shaped by similar conditioning. The reasons for women not making it to the top echelons of the business world extend far beyond the known ones like marriage, maternity or reserving 33 % of women's reservation for greater representation in Parliament. Our country doesn't have adequate and well managed infrastructure for either child-care or elder care. Furthermore, many sections of society frown upon such arrangements, forcing women to take on the role of ideal caregivers, as nurturers and putting end to their career aspirations. What can the family do to help a woman pursue her dreams? How can organizations ensure that, after becoming mothers, women don't get permanently side-lined? The lack of support at home forces a very large percentage of women to recalibrate their ambition. The demand for equality at the workplace has been loud and forceful, but women and their aspirations need equal consideration in the home as well. Women view success very differently from men. Most of them don't openly chase designations or flaunt success symbols for the outside world to see. A women's identity does not come from her career alone. She is a professional, a wife, a mother and more, rolled into one. She views success as the ability to balance these roles in the best possible manner.^{§§§§} There are many conscious and unconscious mind-sets that manifests at home and in the work place, which continue to hold women back; which needs persistent dedication from all stake-holders to unite and expedite the progress where gender equality becomes a tangible reality.

Betrayal of Gender Norms by Public Institutions

In the case of *Tukaram v State of Maharashtra*, (1979) involved a colossal failure of public institution, including not just police and lower judiciary, but also the Supreme Court. A woman named Mathura (who was an orphan and who lived with her brother) who worked as labourers, was sexually assaulted by two police officers within a police station. Initially, the policemen (Ganpat & Tukaram) were acquitted by the Sessions Court. However, the Bombay High Court later convicted them, only for the Supreme Court to acquit them again in 1979. The Supreme Court's decision was controversial, as it argued that Mathura had not raised an alarm and, based on her past sexual history, she must have consented to the sexual intercourse with the policemen. The court's reasoning suggested that because she had previous sexual experience, she may have encouraged the officers, who were intoxicated while on duty, to engage in sexual activity with her. The Court failed to take into consideration that the rape arose from Mathura's wrongful confinement by the Police and that Tukaram was intoxicated on duty. Also the court mistaken understanding of the law on rape: There is a clear difference between submission and consent. Consent involves submission; but the converse is not necessarily true.^{*****} Only a few months before the Mathura case, the court held in a *Maneka Gandhi v Union of India* (1978) that a procedure established by law which derogates from the fundamental right to life under the constitution must be fair, just and reasonable, not fanciful, oppressive or arbitrary. About a month before the *Maneka*

^{§§§§}*Ibid*, p 5- 20.

^{*****}Chandrachud, C. (2019). *The Cases That India Forgot*, Juggernaut Books, p.67-72.

judgement, in *Haskot v State of Maharashtra* (1978) that providing free legal aid to prisoners was the state's duty and not government charity. These lofty exhortations about protecting rights did not seem to extend to Mathura.^{††††} What made the Supreme Court acquit a rape accused on the basis of the victim's sexual history? Why Mathura's sexual history demonstrated that she was likely to have consented; and Ganpat's sexual history was considered evidence of the absence of rape: This was double standard.

Engagement of Judiciary in Shattering Gender Stereotypes

Indian women have consistently challenged deeply ingrained gender stereotypes enshrined in the legal system. The judiciary's progressive stance in acknowledging and supporting these efforts has empowered women to defy these stereotypes. The understanding that gender stereotypes violate the constitutional guarantee of equality was first laid down by the Supreme Court in *Anuj Garg v Hotel Association of India* in 2007. The case involved a constitutional challenge to a section of the Punjab Excise of the Punjab Excise Act which prohibited the employment of any man under 25 years and 'any woman' in an establishment where liquor was being consumed. On the face of it, the aim of the Punjab Excise Act may have been to protect women, but the law reinforced an idea that the Supreme Court described as 'romantic paternalism'.^{††††} The court observed:

“Traditionally, such discrimination was rationalized by an attitude of 'romantic paternalism' which, in practical effect, put women, not on a pedestal, but in a cage. As a result of notions such as these, our statute books gradually became laden with gross, stereotyped distinctions between the sexes. The court concluded that 'the present law ends up victimizing its subject in the name of protection.' It struck down the provision as it suffers from 'incurable fixations of stereotype morality and conception of sexual role' and ended up discriminating against women.”

In 2018, in *Joseph Shine v Union of India*, the Court struck down Section 497 of the IPC, which dealt with adultery. The provision criminalized only the man who had sexual intercourse with the wife of another man and not the adulterous woman. Again, it could have been argued that this was a measure meant to protect women as it criminalized only the man's conduct. But the judges found that historically, the reason only the adulterous man was punished was because the woman was considered the property of man.^{§§§§} The criminalization of adultery was therefore really a criminalization of trespass into the property of a married man. The wife in effect exercised no choice in the matter of sexual relationships. The court struck down sec 497 IPC on the ground stating:

“Section 497 denudes the woman of the ability to make these fundamental choices, in postulating that it is only the man in a marital relationship who can consent to his spouse having sexual intercourse with another. Section 497 disregards the sexual

^{††††}*Ibid*, p 77.

^{††††}Bhatia, G. (2015). Comprehensive Transformative Amendments-Theory and Practice: Rethinking the Nineteenth Amendment and the Place of Women's Rights in the Constitution. *Dartmouth LJ*, 13, 1.

^{§§§§}Kirpal, S. (Ed.). (2020). *Sex and the Supreme Court: How the Law is Upholding the Dignity of the Indian Citizen*. Hachette India, p.136.

autonomy which every woman possesses as a necessary condition of her exercise. Far from being an equal partner in an equal relationship, she is subjugated entirely to the will of her spouse. The ability to make choices within marriage and on every aspect concerning it is a facet of human liberty and dignity which the Constitution protects. In depriving the woman of that ability and recognising it in the man alone, section 497 fails to meet the essence of substantive equality in its application to marriage.” Thus struck down Section 497 of the IPC.

Both *Anuj Garg* and *Joseph Shine* saw the Court taking forward the idea of substantive equality embodied in the Constitution. All these developments link to the radical promise of ‘equality’ in the preamble.*****

But where is the equality in practice? When women come forward to exercise the individual right to love across lines of caste and religion, they are killed by their own families is a powerful reminder of how strong the prejudices of caste and religion are. Pranay Kumar, a Dalit Christian was murdered on 14 September 2018 in Miryalaguda, Telangana, India, in front of his 23-year old wife, Amrutha Varshini, from Vysya community who was five months pregnant: the murder planned by her own father.††††† Another emblematic example is the murder of Sankar a Dalit man in Tamil Nadu who got married to Kausalya, a dominant-caste woman in 2015 against their families wishes. After their marriage, Sankar & Kausalya braved threats from their families to live together. But a year later, the couple was attacked by armed men at the Udampeta bus terminus in broad day light. Kaushalya was severely injured, and Sankar lost his life. A Tiruppur court convicted Kausalya’s father Chinnasamy and five others of planning the murder. But on appeal, the Madras High Court reversed the finding of the lower court, acquitting the father and another person and communiting the other sentences.††††† The Court held that “the prosecution is unable to prove the charge of conspiracy beyond any reasonable doubt.” By erasing the caste context of the murder, the judgement failed to acknowledge the threats posed by the caste system to the constitutional notions of liberty, equality and fraternity.§§§§§

The Obstacle in the Women Reservation Bill: Linked to the Delimitation of Constituencies

The Women’s Reservation Bill has been celebrated for its passage in both Houses of Parliament, but it’s important to acknowledge that this bill is conditional, and it requires conducting a census in the country and subsequently redrawing constituency boundaries based on this census. The logical question, therefore, to ask is: why should reservation of

***** *Supra* note 11.

††††† Hindustan Times, Sept 2018; Srinivasa Rao Appasaru, Father asked me to abort pregnancy, got husband killed: Widow of Dalit Christian in Telangana or click <https://www.hindustantimes.com/india-news/father-asked-me-to-abort-pregnancy-got-husband-killed-widow-of-dalit-christian-in-telangana/story-u1KFHacfHluY8IUz2z62hP.html> as accessed on 20 Dec, 2023.

††††† Scroll.in <https://scroll.in/latest/861223/tamil-nadu-father-in-law-of-dalit-man-killed-in-tiruppur-five-others-sentenced-to-death> as accessed on 20 Dec, 2023.

§§§§§ *Ibid.*

one-third of the seats for women, who make up half of the country's population, be linked to the Census and the complex delimitation of constituencies that is to follow?***** In the case of the Women's Reservation Law, the reality is that about half of the population are women and they are under-represented in Parliament and State legislative bodies.

Article 81 (2) (a) of the Constitution states that the number of seats in the Lok Sabha for a State should have a co-relation with the population of the State and "so far as practicable", the criteria should be the same for all States. Article 170, concerning the legislative Assemblies of States, also takes population as the basis for designing constituencies. But, delimitation in India is a contentious issue, as it acts as an 'incentive' for population expansion with scant regard to development and family planning. This was why a full-fledged delimitation was kept in abeyance in India since 1976. It is now expected to be carried out after the Census which will only be held by 2026 at the earliest.

A census to understand the population of women for the purpose of reservation is unwarranted. The criteria, process and purpose of the Women's Reservation Bill are qualitatively different from those of the delimitation exercise. And, reservation for women in local bodies, which materialised through the 73rd and 74th Amendment Acts of the Constitution, and came into effect in 1993, was not contingent on any delimitation exercise for that purpose. Parliament, however, has lost sight of these aspects.

Conclusion

Legal experts have suggested that given the various obstacles on the route to real women's empowerment, the reservation will not take place after the 2024 election but will happen sometime after the 2029 general election. Since the BJP and Prime Minister spoke so evocatively about empowering women, they could use the 2024 election as an opportunity to walk the talk by having more women candidates. There was also a fine debate in the Lok Sabha, with many women MP's from the opposition making outstanding speeches critiquing the intent and timing of the Bill, even though they and their parties voted in support of it. K. Kanimozhi of the DMK pointed out that she had spoken on the Bill in the Rajya Sabha 13 years ago when the UPA passed it in the upper House. Now she was speaking in the Lok Sabha on the same Bill. She drew attention to the name now used: *Nari Shakti Vandan Adhiniyam*, which translates into "Women Power Worship/Reverence Act". She said that women "do not want to be worshipped and put on a pedestal but be treated as equals and have as much right to this Parliament as you do". She also flagged the apprehensions on linking reservation to delimitation and the endless wait this would lead to.

Mahua Moitra of the Trinamool Congress said that this was a 'women's reservation rescheduling Bill' and a pre-election 'jumla' of the BJP. Supriya Sule of the NCP called it a 'post-dated cheque.' Harsimrat Kaur Badal of the Akali Dal, a former ally of the BJP, tore into the government, saying that in the 'details lie the devil', as it is linked to the Census and delimitation, and called it a 'laddoo' for women that they cannot eat yet.

******The Frontline*, Women's reservation: A law on paper, but a reality far away, Oct 3, 2023.

Women have participated substantially in Panchayati Raj Institutions and Municipal bodies, their representations in the State Legislatures as well as in Parliament is still limited. Despite the uncertainty surrounding the legal implementation of women's reservation, we all eagerly support the prospect of reserved seats for women. While the exact timeline for the legal enforcement of women's reservation remains unclear, in the near term, we can only observe how different political parties across the ideological spectrum allocate tickets and where they stand on this issue. Different parties must seize the opportunity and promote women in leadership positions within their organisations and nurture leadership experience among women cadres to fully avail the promise of Nari Shakti Vandan Adhiniyam.
