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BEYOND DESCRIPTIVE REPRESENTATION: AN INTERSECTIONAL CRITIQUE OF THE 106TH AMENDMENT THROUGH THE PRISM OF CASTE AND RELIGION

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ABSTRACT

The Constitution (One Hundred and Sixth Amendment) Act, 2023 is a landmark in the legislative history of India, providing for reservation of one-third of the seats for women in the Lok Sabha and the State Assemblies. But the amendment does provide 'descriptive representation' in the sense of boosting the sheer number of women in power. But it is based on a homogenous definition of gender. This research piece presents an intersectional critique of 106th Amendment on the premise that a "gender-only" quota could marginalise women at the intersections of suppressed caste and religious identities. The paper examines the legal and political ramifications of the denial of a sub-quota for Other Backward Classes through the 'Prism of Caste and Religion', and the persistent political invisibility of Muslim women. The article argues that, applying Kimberlé Crenshaw's paradigm of intersectionality to the Indian socio-legal context, the amendment does not fulfil "substantive representation". It argues that the 106th Amendment may unwittingly further entrench existing power imbalances, if it does not take into consideration the specific hurdles Dalit, Bahujan and minority women confront. Indian jurisprudence must go beyond just a numerical presence to a multi-dimensional paradigm of inclusive representation if real constitutional equity is to be achieved.

KEYWORDS: Intersectionality, 106th Amendment Act, Indian Constitutional Law, Hanna Pitkin's Theory, Electoral Politics.

INTRODUCTION

The enactment of the Constitution (One Hundred and Sixth Amendment) Act, 2023, commonly referred to as the Nari Shakti Vandan Adhiniyam, signifies a fundamental change in the Indian constitutional law and electoral democracy. While India's democratic architecture has remained intact, the country's premier legislative institutions have remained male preserves and women's political agency has been limited to procedural rather than substantive democracy. The numbers speak of this systemic shortfall. The representation of women in the Lok Sabha inched its way up from a paltry 4.4% in 1952 to a pathetic 14.4% in 2019. To tackle this glaring inequity, a robust constitutional intervention was required to destroy the deeply established patriarchal barricades in political decision-making.

HISTORICAL DEVELOPMENT

This constitutional mandate stems from a tumultuous 27-year legislative struggle marked by intense patriarchal opposition, intersectional conflicts, and political instability. The goal of reserving seats in Parliament for women was first brought to book in September 1996 in the form of the Constitution (81st Amendment) Bill under the H.D. Deve Gowda cabinet. The bill was referred to a Joint Select Committee, chaired by Geeta Mukherjee, which recommended that it be implemented immediately, but the legislation lapsed with the dissolution of the 11th Lok Sabha.

Every attempt to resurrect the mandate met with fierce opposition. The bill was once again tabled by the National Democratic Alliance government led by Atal Bihari Vajpayee in 1998, 1999, 2002 and 2003, only to fall victim again and again to the absence of political consensus and subsequent dissolutions of Parliament. The year 2008 was a landmark when the United Progressive Alliance administration brought the Constitution (108th Amendment) Bill in the Rajya Sabha. The Upper House passed the bill with a huge majority in 2010, but it did not get a vote in the Lok Sabha and lapsed again in 2014.

The Constitution (128th Amendment) Bill was introduced only in a special session of parliament in September 2023. The measure was the culmination of a decades-long civil society advocacy and the increasing realisation of the political power of female voters, and it garnered near-universal nonpartisan support in both chambers of Parliament and Presidential approval on 28 September 2023 to become the 106th Amendment Act.

ESSENTIAL CONSTITUTIONAL PROVISIONS

The 106th Amendment has fundamentally altered the dynamics of the constituent power, by making precise insertions in the Constitution. The basic mechanisms of the Act are based on three new provisions and one revised article, viz.:

Article 330A- This article requires that one-third of the total seats in the House of the People be reserved for women. 2. Importantly, it embeds a framework of intersectionality by providing for a sub-quota that reserves one-third of the seats already designated for Scheduled Castes and Scheduled Tribes under Article 330(2) for SC and ST women only.

Article 332A- This article is a copy of the Union-level regulations and mandates that same one-third reservation must exist in every State Legislative Assembly, guaranteeing that the SC/ST sub-reservation is preserved at the state tier.

Article 239AA- The Act changes Article 239AA(2)(b) to extend the applicability of women's reservation to the Legislative Assembly of National Capital Territory of Delhi.

Article 334A- The article provides for the initiation and duration of reservation. The 126th Amendment to the Constitution has legally linked the implementation of the reserve to the release of the first decennial census after the legislation and a mandatory exercise of delimitation. The reservation, when introduced, will have a "sunset clause" of fifteen years (extendable by Parliament), and will also require rotation of reserved seats following every delimitation exercise.

IMPLEMENTATION BARRIERS: DELINEATION AND CENSUS

The text of the 106th Amendment is a victory for gender justice, but the conditional mechanics of Article 334A severely limits its transformative political potential. By inextricably linking women's political empowerment to the administrative, logistical and politically explosive processes of the census and delimitation, the Act postpones the achievement of substantive democracy.

First, the decennial census — which was supposed to take place in 2021, but has not yet happened, thanks to the COVID-19 epidemic, which delayed the decennial census indefinitely — makes the legislative agenda very unclear. More importantly, the delimitation of redrawing

electoral seats on the basis of new population statistics is constitutionally blocked under Article 82 (via the 84th Amendment) until the release of the first census taken after the year 2026. The rigid process of conducting a census after 2026 and then forming a Delimitation Commission, therefore, delays the earliest practical implementation of the women's quota till the 2029 or perhaps the 2034 general elections.

Moreover, the linkage of the women's quota to delimitation brings the issue of gender parity into the contentious Indian federal "North-South divide". The southern states like Tamil Nadu and Kerala have been successful in implementing measures for population stabilisation but the northern states like Uttar Pradesh and Bihar still face higher population growth. A population-based delimitation post 2026 threatens to fundamentally rearrange the federal balance of power, disproportionately pushing parliamentary representation northwards. The resulting political conflict between states that desire equal federal representation and states that demand representation based on population might block the boundary-drawing process indefinitely.

Such structural interdependence risks making women's political rights captive to regional demographic politics. For scholars and critics, this caveat turns a landmark equity measure into a "future deal" that allows lawmakers to reap immediate political capital without changing existing male-dominated power structures, shifting the onus and political fallout of implementation to future administrations. The 106th Amendment, a historic win over decades of patriarchal opposition, is constitutionally designed in such a way as to include deep procedural hurdles that purposefully impede its immediate efficacy in demolishing systemic impediments.

INTERSECTIONALITY AND THE POLITICS OF REPRESENTATION

To assess critically the efficacy of constitutional initiatives to break down systemic gender barriers, it is essential to base the analysis on existing political and legal theory. The discussion of women's political empowerment in India has to undertake a critique of the very structure of representation and nuanced understandings of how intersecting identities shape access to constituent power. This approach appropriates Hanna Pitkin's dichotomy of representation and Kimberlé Crenshaw's idea of intersectionality to investigate the complexity of gender parity in the highly stratified socio-political landscape of the Indian Parliament.

DESCRIPTIVE AND SUBSTANTIVE REPRESENTATIONS

The philosophical basis of political representation is strongly shaped by the fundamental work of Hanna Fenichel Pitkin, *The Concept of Representation* (1967), which conceptualises representation along many conceptual categories, especially “descriptive” and “substantive” representation. Descriptive representation argues that a legislature should be a demographic reflection of the society it represents. From this formalistic perspective, justice is realised when marginalised groups, such as women, are physically present in decision-making bodies in proportion to their demographic strength, so turning the legislature into an inclusive microcosm of the public.

Conversely, substantive representation is more than just numerical representation and focuses on what the representative does, i.e. their ability and desire to act in a manner that is in the best interests of those they represent. This difference between these two types of representation is an important parameter to judge the depth of democracy in the Indian Parliament. Constitutional quotas are deliberately designed to ensure descriptive representation by requiring a physical presence of female legislators, however scholarly consensus holds that high descriptive representation doesn't automatically translate into high substantive representation.

In a political ecology with ingrained masculine values and tight party structures, the simple induction of women into the legislative arena risks converting a groundbreaking equity step to simply tokenism or “proxy representation”. Elected women become mere onlookers or “rubber stamps” under the directions of the patriarchal party and the undue influence of male relatives. The Sarpanch Pati syndrome is well documented in local self-governance. Descriptive representation is thus a necessary but logically inadequate precondition for political visibility. Substantive representation, even with descriptive achievements, remains unfulfilled in the absence of institutional autonomy to actively define policy objectives and address gender-specific vulnerabilities.

CRENSHAW'S INTERSECTIONALITY AND "TRIPLE BURDEN" IN INDIAN POLITICS

An appraisal of women's political participation is inadequate without the use of “intersectionality,” a theoretical prism developed by legal scholar Kimberlé Crenshaw in 1989.

Intersectionality says that different kinds of inequality (race, class, gender, caste, etc.) don't exist in isolation, rather they're always crashing into each other, working together, and making things worse, creating specific ways of being discriminated against.

The notion of intersectionality gives a critical perspective to comprehend the “triple burden” of class, caste and gender discrimination that underprivileged Indian women have to face in the Indian legal and sociological context. The women of Scheduled Castes (SC), Scheduled Tribes (ST), Other Backward Classes (OBC) and religious minorities are politically marginalised in India, not just because of sexism, but because of a complicated relationship between generational economic deprivation and entrenched caste stereotypes. Dalit women, for example, constitute the lowest rung in the social hierarchy because of the junction of their gender and their “untouchable” status. They face extreme socio-economic restrictions, structural violence, and complete political exclusion.

Therefore, intersectional feminism makes us acknowledge that the political barriers for a woman who is rich, from an upper caste and lives in a city are very different from the several disadvantages of an OBC or Dalit woman in rural India. A theory that exclusively speaks to the axis of gender, and is blind to the axes of caste and religion does not demolish the systematic systems of oppression that prevents the most vulnerable women from using their constituent power.

THE MYTH OF HOMOGENEITY AND THE FALLACY OF THE MONOLITHIC CATEGORY

The ‘Homogeneity Myth’ is a widespread theoretical and legal error in the formulation of gender-based affirmative action, i.e., the assumption that ‘women’ comprise a solitary, monolithic political category with uniform interests and equal access to socio-political capital. It is sociologically incorrect and legally insufficient to treat women as a homogenous category in a country as deeply stratified and diversified as India.

Historically, the Indian women’s movement has had a problem with the dominance of privileged-caste, urban voices which tend to mistakenly drown out the distinctive political demands of subaltern women. The social standing and political behaviour of women from upper castes are poles apart from the realities of life of women belonging to OBCs or minority communities. The legal interventions based on the Homogeneity Myth thus are at the risk of

unfairly benefitting the 'elitist women' at the cost of their lower caste and minority counterparts.

Broad gender quotas, without recognition of internal stratifications, may mistakenly reproduce existing power asymmetries, as they enable socially dominant groups to capture the reserved political areas. If substantive democracy and the ideas of equitable constitutionalism are to be realised, this monolith must be dismantled. Contemporary political theorists and anti-caste researchers have argued that women's rights are inextricably interwoven with caste and community identities, and so, substantive gender justice requires special procedures that speak to the intersectional reality of India's most marginalised individuals.

REMOVING THE EXCLUSION OF OBC WOMEN AND THE SCOPE OF SC/ST SUB-QUOTAS

The passage of the Constitution (One Hundred and Sixth Amendment) Act, 2023 is being celebrated as a landmark event for parity constitutionalism, but it deserves a critical legal and sociological criticism under the lens of caste. The Act's legislative architecture – especially its omission of a sub-quota for Other Backward Classes and its formalistic approach to Scheduled Caste and Scheduled Tribe reservations – is indicative of the deep-seated tensions between gender justice and caste equity in the hostile, cut-throat arena of Indian politics. The Amendment by imposing a wide gender quota across a deeply stratified social hierarchy risks creating unexpected consequences, not the least of which is the consolidation of political hegemony by socially and economically dominant groups under the pretence of women's empowerment.

THE GEETA MUKHERJEE COMMITTEE, 1996

The desire for a "quota-within-quota" is not a recent political afterthought; it has been the fundamental fault-line derailing women's political participation for almost three decades. The contestation started with the introduction of Constitution (81st Amendment) Bill in 1996 and its reference to a Joint Parliamentary Committee headed by Geeta Mukherjee. The Geeta Mukherjee Committee Report (1996) accepted the significant under-representation of marginalised women, but it did not advocate an immediate OBC sub-quota. Instead, the Committee chose a respectful posture saying that the government "may consider...extending...reservation to OBCs also at the appropriate time so that the women

belonging to OBCs will also get the benefit of reservation”.

The OBC political stalwarts responded vehemently to this postponement during the legislative debates of 1996 and 1997. Sharad Yadav, Nitish Kumar and others cautioned that a blanket quota for women would only become an instrument for upper-caste women, urban women and privileged women to monopolise the legislative space and thus neutralise the demographic and political gains that the backward communities had made after Mandal Commission. Yadav’s infamous and highly controversial “parkati mahila” (short-haired women) remark, rightly condemned for its misogynistic undertones, starkly underscored a structural fear: that the legislation, devoid of caste-based safeguards, would fracture the anti-caste movement and allow for an elitist capture of democratic institutions. The story serves as a stark reminder that in the brutal arena of Indian electoral politics, geographical and gender-based reservations cannot be delinked from the basic realities of caste stratification.

OMISSION OF OBCS: LEGAL CRITIQUE

The 106th Amendment does not provide for an OBC sub-quota because of a difficult constitutional obstacle, but it puts the substantive effectiveness of the Act at risk. Article 330 and Article 332 of Indian Constitution provide for the reservation of seats for SCs and STs in Lok Sabha and State Legislative Assemblies in proportion to their demographic strength. Importantly, the Constitution does not provide for political reserve for OBCs in these upper houses of legislature.

Article 243D (6) is an enabling provision for State Legislatures to make measures for reserving of seats in favour of backward classes in Panchayati Raj Institutions (local bodies). But the enabling clause is not available for Union Parliament or State Assemblies. Therefore, the advocates of the existing legislative framework argue that the introduction of a sub-quota for OBC women in the 33% gender reservation without a prior constitutional amendment providing for horizontal political reservation for OBC men is jurisprudentially untenable and would not pass constitutional muster.

But beneath this rigid legal formality lies a significant democratic deficit. OBCs make up around 41% of India’s population. The legislature has effectively put OBC women into the “general” (unreserved) women’s quota to compete with candidates from socially and economically powerful castes by excluding them from the protected ambit of the 106th

Amendment. OBC women are susceptible to systemic vulnerabilities, they have educational and economic shortfalls, faced with significant patriarchal oppression, and hence do not possess the capacity to obtain party tickets and win elections in unreserved female constituencies. Legal scholars and critics say this makes the 106th Amendment an instrument of “elite empowerment”, where the statutory benefits will be claimed by upper-caste women with pedigreed political lineages, thereby shifting the burden of representation away from the subaltern.

THE SCOPE AND SCOPE OF SC/ST SUB-QUOTAS

Unlike the exclusion of OBC, the 106th amendment provides for explicit horizontal reservation for women belonging to SC and ST. The newly included Article 330A (2) and 332A (2) provides that One-third of the seats at present reserved for SCs and STs in the Lok Sabha and in the State Assemblies, as the case may be, shall be filled by women belonging to such categories. Although this fulfils the minimum constitutional need of descriptive representation, a serious legal analysis shows that the statutory protections must be reinforced with strong socio-political empowerment. For this critical constitutional guarantee to be made one of true political agency, and to have its intended substantive effect, it requires the State to actively break down the institutional walls, upper-caste gatekeeping and systemic electoral hostility that Dalit and Adivasi women, as a group face.

The constitutional foundation of protecting Scheduled Castes and Scheduled Tribes must be preserved and vigorously protected against dilution so that affirmative action is as inclusive as possible. The 106th Amendment’s provision for SC and ST women is an essential bulwark against the convergence of patriarchal exclusion and collective caste-based marginalisation. Substantive equality needs to recognise the structural disenfranchisement of Dalit and Adivasi women as one class. Rather than probing the internal demographics of these historically oppressed groups or breaching the constitutional guarantee through internal sub-classification, the State must direct its efforts toward proactive, state-sponsored electoral capacity-building. Real fairness requires removal of larger structural impediments, upper-caste gatekeeping and institutional hostility, so that the revolutionary potential of the 106th Amendment is realised for the SC and ST people as an indivisible collective whole.

To summarise, we can say that whilst 106th Amendment seems to fill gender gap in Indian political sphere, its relationship with the entrenched caste system needs to be further legislated.

The Act's promise of positive change is vitiated by the stringent legislative limits against an OBC sub-quota and the unfriendly electoral environment which further aggravates the socio-economic vulnerabilities of all SC and ST women as a whole. The Nari Shakti Vandan Adhiniyam risks becoming a mechanism for procedural parity that ultimately protects elite political hegemony, until legislative and electoral frameworks evolve to deal with the granular, intersecting realities of upper-caste dominance and protect subaltern political agency in its entirety.

POLITICAL ERASURE AND THE REPRESENTATION OF THE MUSLIM WOMAN

Any discussion on the Constitution (One Hundred and Sixth Amendment) Act, 2023 will be incomplete without discussing its impact on India's religious minority. While the Act is lauded as a win for gender parity, it does not recognise the intersectionality of gender and religion, so adding to the political erasure of minority women, especially Muslim women. The legislative framework treats "women" as a monolithic and homogenous political constituency ignoring the acute socio-economic and political marginalisation of Muslim women. This omission opens a complicated constitutional dispute on the boundaries of affirmative action in a secular state, pitting the necessity for substantive representation against the constitutional prohibition of religion-based political quotas.

POLITICAL ERASURE AND DEMOGRAPHIC REALITY

Historically, the presence of Muslim women in India's highest legislative bodies has been abysmal, a reflection of a systemic exclusion from the systems of constituent power. The empirical evidence highlights this democratic deficiency. For example, the historical records of parliament show that there were just two Muslim women MPs among 50 women MPs in Lok Sabha. The extent of this marginalisation was thoroughly recorded in the 2006 Report of the High-Level Committee to Enquire into the Social, Economic and Educational Status of Muslims in India also known as the Sachar Committee Report. The Sachar Committee gave irrefutable proof of the terrible backwardness of the Muslim population and identified 90 minority concentration regions which were very behind in key development metrics. In fact, the socio-economic position of Muslims has been referred to often in parliamentary discourse as "almost as backward as SC/ST and more backward than Dalits". Muslim women, positioned at the junction of a marginalised gender and a targeted religious minority, are subject to severe

vulnerabilities, particularly in contexts increasingly defined by majoritarian politics and communal animosity.

The 106th Amendment Act does not include a sub-quota for Muslim women and some perceived the act as a vehicle that would advantage privileged, majoritarian women at the detriment of minorities. This conspicuous omission was cited as the reason for the lone dissentient votes against the 106th Amendment in the Lok Sabha. MPs Asaduddin Owaisi and Imtiaz Jaleel voted against the Bill, saying that gender quota without sub-reservations for Muslim and Other Backward Class women would intentionally “close the door on Muslim representation”.

IDENTITY POLITICS

The lack of a religious sub-quota would greatly influence the course of identity politics in India. Substantive democracy means that marginalised groups have the political agency to talk about their own lived experiences and to determine policy agendas. Given gender, identity politics devoid of its religious dimension produces a compulsory homogenisation of the female identity. In the cut-throat calculus of Indian electoral politics, political parties are ready to go with “winnability.” Without a constitutionally mandated sub-quota, the likelihood of parties risking Muslim women candidates in the newly reserved general constituencies is slim, given fears of a majoritarian backlash or the consolidation of votes against minority candidates. There is also a risk that the 106th Amendment creates a precedent of “proxy representation” where the physical presence of women in the Lok Sabha may increase, but the distinctive voices, complaints and political agency of Muslim women are systematically eliminated from the legislative sphere altogether. They are marginalised and hence can’t take use of the very laws that are supposed to politically empower them.

SECULARISM VS. ARTICLE 15(3)

A religious sub-quota in the Women’s Reservation Act is a serious constitutional riddle. Can a secular republic establish religion-based political sub-quotas for women under the protection discrimination provision of Article 15(3)? The textual design of the Indian Constitution has a sharp tension between non-discrimination and affirmative action. Article 15(1) bans the State from discriminating against any citizen on the ground only of religion, race, caste, sex or place of birth. At the same time Article 15(3) is an enabling provision which says that nothing in the

State shall impede the State from "making any specific provision for women and children." The Supreme Court has consistently held that Article 15(3) is wide enough to include the full field of operation of the State and hence by implication, there exists a constitutional obligation to abolish socio-economic backwardness of women.

But the use of Article 15(3) to establish a political quota simply on the basis of religion is in direct conflict with the core tenets of Indian secularism and historical progress in electoral politics in the Republic. During the Constituent Assembly Debates, the framers were deeply divided and eventually rejected the British-era legacy of "separate electorates" and communal representation. The removal of religion political restrictions was considered important to curb separatist impulses and build a unified secular society. Thus, the Constitution specifically limits political reservations in Lok Sabha and State Assemblies to Scheduled Castes and Scheduled Tribes (Articles 330 and 332). Also, article 325 provides for a single general electoral roll and that no person shall be ineligible for inclusion on the ground of religion.

This bar is also further consolidated by the jurisprudence of the Supreme Court. The Court in *State of Madras v. Champakam Dorairajan* (1951) in a landmark judgement invalidated a government order that distributed seats in educational institutions on the basis of religion and caste quotas, saying that classifications based on religion are per se unconstitutional. Further, the nine-judge bench in *S.R. Bommai v. Union of India* (1994) has decisively laid down that secularism is an inalienable part of the "basic structure" of the Constitution, and that the State must be impartial and cannot mix religion with any secular activity, including the electoral and legislative processes.

In *Indra Sawhney v. Union of India* (1992), the Supreme Court had held that non-Hindu communities could be considered a "backward class" for the purpose of reservations in employment and education under Articles 15(4) and 16(4) on the basis of socio-educational backwardness. It had, however, specifically warned against reservations based on religion alone. The Court said that the use of religion as the primary basis for State sponsorship or reservation is "constitutionally ultra vires" and "uncharitable to the noble and pious spirit of the founding fathers".

Thus, a stark legal constraint emerges. Article 15(3) provides for positive discrimination in favour of women, but it cannot be read in isolation from the secular strictures of Article 15(1)

and Article 325. The 106th Amendment would create a political sub-quota for Muslim women and this would be unlawful since it seeks to revive the communal representation that the Constituent Assembly so clearly buried. In sum, the Religious Prism illustrates the glaring limitations of legal equality in Indian constitutionalism. The secular paradigm explicitly prevents religion-based political quotas to promote national unity, yet the same legal formality becomes a tool of real unfairness for Muslim women. Thus, the Muslim woman, excluded from a legally protected place in the 106th Amendment, is left singularly vulnerable in a hostile political arena, making her politically invisible despite the promise of parity constitutionalism.

JUDICIAL VIEWS AND COMPARATIVE GLOBAL QUOTA MODELS

The constitutionality and practical effectiveness of the Constitution (One Hundred and Sixth Amendment) Act, 2023 needs to be contextualised within the Indian Supreme Court's rich jurisprudence on affirmative action and examined against comparative worldwide quota schemes. A careful legal examination shows the contradiction between the formal assurances of the amendment and the substantive, intersectional equality that Indian constitutionalism demands.

SUBSTANTIVE EQUALITY AND HORIZONTAL QUOTAS

The Indian Constitution does not regard equality as an abstract, formalistic concept, but as a requirement for practical justice. In progressive constitutional jurisprudence, particularly in the seminal judgement of *State of Kerala v. N.M. Thomas*, the real equality of opportunity under Article 16(1) is to eliminate structural handicaps and not to insist on absolute numerical equality. The State is constitutionally bound to implement affirmative action to create the level playing field for the disadvantaged sectors.

Article 15(3) is the main constitutional engine for testing gender-based affirmative action. It allows for unique provisions for women. In *Government of Andhra Pradesh v. P.B.* The Supreme Court strongly held that the power under Article 15(3) is comprehensive enough to include all governmental actions and has clearly upheld affirmative action to erase women's socio-economic backwardness and to promote effective equality. However, the precise mechanics of gender quotas are determined by the doctrine established in *Indra Sawhney v Union of India*. The Court differentiated between 'vertical reservations' (social reservations to Scheduled Castes, Scheduled Tribes and Other Backward Classes under Article 16(4)) and

‘horizontal reservations’ (special reservations for categories like women or physically handicapped persons under Articles 15(3) or 16(1)). Horizontal reservations “interlock” with vertical reservations. This makes it easy for women selected on merit within their social categories to fill the entire horizontal quota.

Recently, this judicial construct was reiterated in *Saurav Yadav v. State of U.P.* whereby it was established that such horizontal reservations are to be implemented across the vertical categories to provide equal compartmentalisation while maintaining enough intersectional representation. Arguably, the 106th Amendment’s failure to establish an express OBC sub-quota ignores this interlocking framework recognised by the courts. It lumps women together as an undifferentiated mass in the unreserved general category, bypassing the intersectional fact that social backwardness exacerbates gender disadvantage, a major problem articulated in the *Indra Sawhney* paradigm.

GLOBAL QUOTA MODELS: A COMPARISON

The Indian ‘top-down’ legislative model inherent in the 106th Amendment is in stark contrast to the quota systems operating in high performing jurisdictions such as Rwanda and South Africa. India has single-member constituencies and follows a First-Past-the-Post (FPTP) voting system. The 106th Amendment provides for a reservation of 33% with a rotation of constituencies after delimitation operations. While the rotating seat system prohibits monopolisation, sociological studies observe that it produces “lame duck” members; women leaders, aware that their constituency would be de-reserved in the next electoral cycle, have no motivation to focus on long-term governance and forge long-lasting political capital. Furthermore, single-member FPTP systems tend to portray elections as a “zero-sum” game, where the victory of a female candidate is perceived as a direct defeat for the established male politicians, thereby strengthening patriarchal resistance.

In contrast, Rwanda, which has the greatest female representation in parliaments globally (61.3%), has a hybrid constitutional model that corresponds to the reality of the socio-political context. The 2003 post-genocide Rwandan Constitution set a minimum 30% quota, but importantly reserved 24 seats to be filled only by “women-only elections”. This technique effectively sidesteps the patriarchal gate-keeping of traditional political parties, allowing women to directly empower other women. South Africa (with nearly 40% female representation) also achieves parity without a strong constitutional mandate for the national

legislature. Rather it uses a closed-list proportional representation system with optional party quotas. The African National Congress has a strategy of 50/50 gender participation in its party lists, often employing a 'zipper system' in which men and women alternate in the lists. The PR system is intrinsically “zipper system” to women since it is a “positive-sum” game; parties are socially incentivised to “balance the ticket” with diverse, intersectional candidates to maximise their collective appeal to the larger public. This compels political parties to grow female leadership within, undermining the fiction of “winnability” used to exclude women in FPTP systems.

CONCLUSION AND RECOMMENDATIONS

The Constitution (One Hundred and Sixth Amendment) Act, 2023, marks a watershed moment in the journey of Indian democracy, as it legally erodes the patriarchal monopolies that have been profoundly established in the nation’s highest legislative arenas. The Indian Parliament has scripted a momentous procedural win to ensure a constitutional mandate for a 33% reservation for women in the Lok Sabha and State Legislative Assemblies. However, a close analytical and constitutional scrutiny of the Act exposes a sharp contrast. The Nari Shakti Vandan Adhiniyam is a success in the domain of descriptive representation and procedural equity, but an egregious intersectional failure.

Worse so, the Act overlooks the ‘Triple Burden’ of caste, class and gender, by basing itself on the constitutionally defective ‘Homogeneity Myth’ of the unreserved general category. The legislature’s refusal to provide a horizontal sub-quota for Other Backward Classes and religious minorities ignores the intersectional realities of Indian culture. Therefore, the Act creates a vacuum in which socially and economically dominating women are particularly poised to seize the newly reserved general constituencies, allowing an aristocratic monopoly over legislative areas. Further, the State and political machinery need to put in place robust capacity-building frameworks to collectively empower Dalit and Adivasi women against systemic upper-caste gatekeeping to serve the constitutional purpose of the existing Scheduled Caste and Scheduled Tribe sub-quotas, lest they be left politically disenfranchised within the larger patriarchy.

The legal and electoral framework must be thoroughly reformed to pass from procedural parity to a substantive, representative democracy. The following concrete legislative ideas provide a roadmap to address the Act’s structural flaws:

There is an urgent need for Parliament to pass an amendatory provision to delink the implementation of the 106th Amendment from the post-2026 census and delimitation scenarios. By decoupling these processes, the 33% reserve can be implemented immediately within existing constituency borders, preventing a significant equity policy from being forever stalled by administrative inertia.

There is a need for a parallel constitutional change under Article 368 to provide for horizontal political reservation for OBCs in Parliament and State Assemblies so that the gains of political empowerment filter down to the subaltern. After laying this constitutional framework, the 106th Amendment will have to be amended to ensure proportionate sub-quota for OBC women, as historically suggested by the Geeta Mukherjee Committee and the Standing Committee.

The Act must have a mandatory “Social Audit” process, to be completed by an impartial constitutional agency (such the Election Commission or a dedicated tribunal) five years after implementation. Such an audit should critically assess the substantive performance, policy impact and institutional independence of elected women to ensure the Act is promoting independent political agency and not tokenism.

The 106th Amendment must be supplemented with an amendment to the Representation of the People Act, 1951, making internal party democracy mandatory. Political parties should be legally required to implement intersectional diversity in the distribution of tickets and to develop mandatory state-funded capacity-building and leadership training programs for first-generation female politicians to destroy internal patriarchal structures. Ultimately, the strength of Indian constitutionalism is in its capacity to go beyond nominal equality.

Substantive equality demands that the State take positive measures to dismantle systemic barriers and ensure a fair playing field for all citizens, irrespective of their intersecting disadvantages, to truly exercise constituent power. The promise of parity constitutionalism will remain unfulfilled until the 106th Amendment is secured with solid intersectional safeguards and freed from bureaucratic delays. The real democratic ideal is a society where political representation is not simply an act of descriptive inclusion but a transforming force capable of demolishing the most profound mechanisms of oppression to produce a truly equal Republic.

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