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Political & Democratic Rights of Women Globally: A Situational Analysis With Special Reference to India

Dr. Rajshree Choudhary* & Sneha Singh*

Abstract

Woman Suffrage, along with suffrage of slaves, downtrodden and ethnic minorities, has been an issue since ages, though collective voices were raised against it only in the 19th century. This article addresses the overall problem of deflating democratic spirit all over the world along with doing the situational analysis of political and democratic rights of women globally and then forging into the discussion of these rights for women in India. Provision of rights is one thing, and their practice and implementation is a completely different scenario, which can be observed by looking at the fact that women were able to break the barrier of 10% representation in the Lower House of the Parliament in India after 62 years of Independence in 2009. The article tries to address the true picture of the women suffrage in India with reference to the voting trends and political participation of women as candidates. The suggested measure of 33% Women Reservation at the level of Parliament and State Legislatures has been discussed by referencing the same measure through 73rd and 74th Amendments of the Constitution of India, so as to check its constitutional validity and to measure its predicted success. Some other measures to ensure 'effective' women participation have also been discussed.

KEY WORDS: Political Rights, Democratic Rights, Women Suffrage, Women in parliaments, 33% Women Reservation, Discrimination

1. INTRODUCTION

Before forging into the concept and status of political and democratic rights, we have to understand what is a 'right' and what are its kinds while tracing the genesis of the afore-mentioned particular rights. In words of Plato, "Society arises out of the needs of mankind".¹ Every person has certain interests and necessities and often they are realised in form of rights. A 'Right' is in all probability one of the most variedly defined concept, which changes its form with change in the perspective of field. There are many fields wherein the concept of rights has been considerably debated upon. These fields are philosophy, law, deontology, logic, political science, and religion. However, rights are said to have the greatest importance when guaranteed by law. A 'legal right' is popularly defined as 'those claims of a person over other fellow beings, over the society and over the government, which are recognised and guaranteed by law'.²

Rights have been classified as Personal, Public, Corporeal, Incorporeal, Original, Ancillary, etc., however, what we need to recognise here is that these are rights with individual interests and when we talk about rights at community, state or national level one needs to recognise rights as Human Rights which are the basis of human existence and from there the rights branch into Civil, Political, Economic, Cultural and Social Rights. These have been recognised by various international conventions and covenants like Universal Declaration of Human Rights, 1948, International Covenant on Civil and Political Rights, 1966 and International Covenant on Economic, Social and Cultural Rights, 1966. These instruments aim at a system where security, dignity and fair play are assured to everyone.

Civil Rights are the parent while Political Rights are its specie and democratic rights are sub-specie. Political rights have been called to be associated to an individual's ability to participate in the civil and political life of the society and state without fear of discrimination or repression, and are tied closely to citizenship status. Such rights include not only the right to vote in an election, but also the rights to join a political party; run for office; and participate freely in political rallies, events, or protests.³ When considering the motto of democracy i.e. 'a government by the people, of the people and for the people' it is clearly highlighted that without political participation with reference to all the above-mentioned instances,

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¹ Wilson, J. (1977). The Basis of Plato's Society. *Philosophy*, 52(201), 313-320. Retrieved January 30, 2022, from <http://www.jstor.org/stable/3749586>.

² Democratic Rights. (2015). In *Democrat Politics - 1: Textbook in Social Science for Class - 9*. Retrieved January 18, 2022, from <http://ncert.nic.in/textbook/textbook.htm?iess4=6-6>

³ Commission on Security and Cooperation in Europe, U. S. Helsinki Commission. (2017). Citizenship and Political Rights. Retrieved January 18, 2022, from <https://www.csce.gov/issue/citizenship-and-political-rights>

democracy will not be successful. In a democracy like India right to equality and even freedom of speech and expression has been associated with political rights.

Walter J. Riker in his work "Human Rights Without Political Participation?"⁴ has traced the possibility of Human Rights in societies, which are not democratic and are not democratizing. He begins his discussion by mentioning the claim of John Rawls that "benevolent absolutisms" honour human rights without honouring political participation rights. He mentions one of many criticisms to this claim made by Rawls, which even the researcher conquers with. According to him this objection holds that without political participation rights, individuals cannot secure the content of their rights against encroachment. Meaning thereby that it is the freedom of political participation, which in turn allows people to claim their other rights. Casting a vote is like voicing an opinion and being allowed to participate as a candidate, is the vehicle of change that the society might need especially to discard oppression. This idea indeed appeals to the instrumental value of political participation rights.

However, the status of political and democratic rights has not always been the same. People have had to struggle to gain their political rights through several centuries. Even then these political rights were not realised in their entirety at once. There was a gradual and step-by-step progression of these rights. For women the struggle has been even harder as they have had to and even today are battling against many prejudices and odds against them.

This paper will trace the origin and history of the democratic political rights and will analyse the status of these rights with reference to women especially in India.

2. HISTORY AND DEVELOPMENT OF DEMOCRATIC AND POLITICAL RIGHTS

If we reflect upon the importance of these rights, they can be directly associated with the guarantee of freedom to contribute to the process of governing the affairs of society in which one lives.⁵ In India there is not a separate segregation of political rights per se in the Constitution of India. However, Article 14, Article 19 and Article 21 together guarantee these rights indirectly and even the governmental process is structured so as to provide an opportunity to the 'eligible' citizens to participate in governance of State politically. The Representation of the People Act, 1951 provides for Universal Adult Suffrage i.e. every Citizen of India, subject to the restrictions prescribed by the Act in Section 62, has a right to cast vote at the age of Majority which is 18 years in India. There is also a capacity to stand for Elections prescribed by the Act, again with certain restrictions within Section 8 that have been pronounced reasonable by the Hon'ble Supreme Court. However, this feat was not achieved overnight and still several countries all over the world lack the basic political rights even in proclaimed democratic countries.

The advent of political rights came with first marked democracy that is said to be ancient Greek City-state of Athens. In fact the word democracy traces its origin from Greek elements, *dêmos* which means "people" and *krátos* which means "force" or "power", and thus means literally "people power". This became possible beginning with the efforts of Solon (594 BC).⁶ However, democracy was not for everyone as only 'Male citizens' in Athens could vote on all the decisions that affected the city and serve on juries, whereas women, children, slaves and foreigners living in Athens (known as metics) were banned from participating in governance.⁷ Another example of active political participation is Republic of Rome, where every citizen was expected to play an active part in governance. When the Romans overthrew their Etruscan conquerors in 509 B.C.E, Roman Republic was developed. There were several categories of Citizenship and with that the rights also varied. As

⁴ Riker, W. J. (2014). Human Rights Without Political Participation? *Human Rights Review*, 15(4), 369-390. doi:10.1007/s12142-014-0341-3

⁵ Milovanovich, Z., Dr. (n.d.). *Civil and Political Rights*. Lecture notes. Retrieved February 01, 2022, from <http://www.lincoln.edu/criminaljustice/hr/Civilandpolitical.htm>

⁶ Harris, E. (1997). *A New Solution to the Riddle of the Seisachtheia*, in *The Development of the Polis in Archaic Greece* (L. Mitchell & P. Rhodes, Eds.). Oxfordshire, United Kingdom: Routledge. p.103

⁷ Ancient Greece - Athens - The British Museum. (n.d.). Retrieved January 09, 2022, from http://www.ancientgreece.co.uk/athens/home_set.html

for political rights though both men and women were citizens in the Roman Republic, but only men could vote and the lower-class citizens, or plebeians, had virtually no say in the government.⁸

As the centuries progressed democratic structures flourished and one would assume that political rights would also be granted equally. But this assumption holds no ground when history of adult suffrage is traced. Discriminations against women, slaves, illiterates, disabled, poor and persons without property were in vogue even till the first quarter of 20th Century.

While the Isle of Man in 1881, gave women who owned property the right to vote, however with the extension of voting rights to all women in 1893, New Zealand, which was a self-governing British colony, became one of the first in the world to grant adult suffrage.⁹ The colony of South Australia followed suit in 1894,¹⁰ and gave 'white' women not only the right to cast vote but also for the first time allowed the women to stand for election. When all the six Australian colonies federated and became 'Commonwealth of Australia', universal white suffrage was established. However, Aborigines were allowed to participate in democratic practices after more than half of 20th Century had passed.

In United States of America, first the white males who did not hold any property were disenfranchised along with women, native and black population. Around 1856 during the Presidency of Andrew Jackson Universal White Male Suffrage was allowed in most states while few made tax payments a necessary requirement. With passage of time steadily and sometimes with certain failures and steps backtracked, Black Population, Indian Native Population and Women were able to gain rights to vote. It was not until the 26th Amendment of U.S. Constitution in 1971, which finally granted suffrage for all men and women aged 18. There are still many roadblocks in the path of smooth functioning of democracy.^{11 12 13}

The above elucidations are only few instances of rampant discrimination with respect to political rights and few examples of overcoming the same. The struggle has been long and drawn. Apart from Australia and United States of America, which are quite liberal and established democracies, other democracies like Canada and India have had a different approach to democracy. As soon as they were freed from the colonisation, with the help of the instruments of international convenience, they adopted democracy as the basic feature of their governance. India gained independence in 1947 and as soon as its constitution was brought into force and elections were scheduled to be held, Universal Adult Suffrage was adopted through Article 326 of the Constitution of India, giving right to both men and women, not only to cast their votes but also allowed them to contest the elections as candidates. Earlier the age of gaining Suffrage right was 21 years, however the 61st Amendment of the Constitution of India, passed in 1989, lowered the voting age of elections for the Lok Sabha and the Legislative Assemblies of States from 21 years to 18 years.

These changes were brought about after the blood-shedding World Wars, where a need was realised to construct a 'Global Society' with respect within and outside the territorial boundaries of Nations. The era of Colonisation was coming to an end and new democracies and republics were coming into existence. Subsequently, several International instruments were introduced over the years, which aimed at fulfilling the reality of 'Right rich World'. As for political and democratic rights of casting a vote and contesting the elections, these instruments reflected as to how right to vote can influence governmental decision-making and how as a candidate rights can be better protected. The position of International Instruments with reference to Suffrage Rights is as follows:

⁸ ushistory.org. (2022). The Roman Republic. In *Ancient Civilizations Online Textbook*. Retrieved January 09, 2022, from <http://www.ushistory.org/civ/6a.asp>

⁹ Nohlen, D., Grotz, F., & Hartmann, C. (2001). *Elections in Asia and the Pacific: A Data Handbook Volume II: South East Asia, East Asia, and the South Pacific*. Oxford, United Kingdom: Oxford University Press. p. 14. doi:10.1093/0199249598.001.0001

¹⁰ Lindop, C. (2008). *Australia and New Zealand*. Oxford, United Kingdom: Oxford University Press. p. 27

¹¹ Scher, R. K. (2015). *The politics of disenfranchisement: Why is it so hard to vote in America?* London, United Kingdom: Routledge. p. viii-ix.

¹² Murrin, J. M., Johnson, P. E., McPherson, J. M., Fahs, A., Gerstle, G., Rosenberg, E. S., & Rosenberg, N. L. (2012). *Liberty, equality, power: A history of the American people* (6th ed.). Belmont, CA: Thomson Wadsworth. p. 296.

¹³ Infoplease. (2000-2017). U.S. Voting Rights. Retrieved January 17, 2022, from <https://www.infoplease.com/timelines/us-voting-rights>

The Universal Declaration of Human Rights in Article 21 states that, "Everyone has the right to take part in the government of his/her country, directly or through freely chosen representatives", "The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret ballot or by equivalent free voting procedures".¹⁴

Article 25 of the ICCPR¹⁵ also guarantees right on similar lines while associating this guarantee of voting rights and free elections to other articles, specifically Article 2, which in turn states that, "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Thus, not on voting rights are envisaged but equal rights with freedom of choice are also desired.

Various other regional organisations have also mentioned Suffrage Rights. For example:

Convention for the Protection of Human Rights and Fundamental Freedoms, which was entered into force in 1953 by Council of Europe in its Article 3 requires the Convention Parties to hold free elections at reasonable interval.¹⁶

Organisation for Security and Cooperation in Europe (OSCE) in a Conference on Security and Co-operation in Europe Meeting on the Human Dimension in Copenhagen issued a document, namely 'International Standards of Elections, 1990'. It emphasises that free elections are necessary for expression of inherent dignity and protection of equal rights of all human beings.¹⁷

European Union (EU) in the Council Regulations 975/99 and 976/99 of 1999 provide that EU shall stride to provide technical and financial aid for supporting the process of democratisation, develop the quality of democracy and protect rule of law to ensure respect towards human rights and fundamental freedoms.¹⁸

American Convention on Human Rights, an Organization of American States (OAS)¹⁹ Treaty Series was signed at San José, Costa Rica, on 22 November 1969 and entered into force July 18, 1978. In its Article 23 i.e. Right to Participate in Government, it prescribes certain rules for its members, which in concise are that Every citizen shall have a right and opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives, to vote and to be elected in genuine periodic elections and to have access to public service of his country. It prescribes for universal and equal suffrage and allows for reasonable restrictions only on the grounds of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings. Though education has been added as an added requirement, the components of gender, race, ethnicity and property or tax requirements have been removed. The Article 20 of the American Declaration of the Rights and Duties of Man guarantee the right of citizens to vote and be elected in genuine periodic elections.

In 1992 the Protocol of Washington of the Organization of American States (OAS), (in ratification)²⁰, strengthened the mechanisms for defending democracy. Now the Charter of OAS establishes in its preamble that, "representative democracy

¹⁴ United Nations, General Assembly. (2015, October 06). *Universal Declaration of Human Rights*. Retrieved January 05, 2022, from <http://www.un.org/en/universal-declaration-human-rights/>

¹⁵ United Nations, General Assembly. (1996-2022). *International Covenant on Civil and Political Rights*. Retrieved January 15, 2022, from <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

¹⁶ Council of Europe, European Commission of Human Rights. (n.d.). *Convention for the Protection of Human Rights and Fundamental Freedoms*. Retrieved January 05, 2022, from https://www.echr.coe.int/Documents/Convention_ENG.pdf

¹⁷ United States, Congress, Commission on Security and Cooperation in Europe. (1990, June 29). *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*. Washington, DC: CSCE. Retrieved January 07, 2022, from <https://www.csce.gov/international-impact/publications/document-copenhagen-meeting-conference-human-dimension-csce>

¹⁸ European Union. (n.d.). *Communication from the Commission on EU election assistance and observation*. Retrieved January 07, 2022, from <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:52000DC0191>

¹⁹ Organization of American States. (2010, August 21). *Basic Documents - American Convention on Human Rights*. Retrieved January 26, 2022, from <https://www.cidh.oas.org/basicos/english/basic3.american.convention.htm>

²⁰ Organization of American States. (2014). *Protocol of Amendments to the Charter of the Organization of American States (A-56) "Protocol of Washington"*. Retrieved January 25, 2022, from http://www.oas.org/dil/treaties_a-56_protocol_of_washington_sign.htm

is an indispensable condition for the stability, peace and development of the region," and establishes that one of its purposes is "to promote and consolidate representative democracy, with due respect for the principle of non-intervention."

The African Charter on Human and Peoples' Rights of 1981²¹ of African Union in its Article 13(1) provides that every citizen shall have the right to participate freely in their government.

Thus, all the above mentioned documents and instruments support the modern concept of political rights that every citizen should have the right and prospect, with certain reasonable restrictions, to be able to take part in governance, either by themselves or through preferred and elected representatives. However, the development of democracy has been snubbed due to several factors, like Civil Wars, Absolute Monarchy or Dictatorship, Hermetic Police State, Military Rule, Oil Kleptocracy, enforced rule, among others.²² It was also reported by the Freedom House that post COVID-19 the situation has worsened.

Thus, the crisis for democracy is great. However, here we are to focus on democratic rights for women around the world and conduct a situational analysis for India.

3. POSITION OF DEMOCRATIC RIGHTS FOR WOMEN AROUND THE WORLD AND IN INDIA

There is no doubt in the fact that there is a difference in the physical forms of men and women. However, this difference has been made the basis to suppress and subjugate women since the beginning of time. When the struggle for equal suffrage was still on going in the late 19th century, James L. Hughes in his book titled 'Equal Suffrage' cited reasons for granting equality of political rights. For moving the masses he even cited several biblical examples and thoughts of Christian Fathers and theologians.²³ He also had to answer several objections even to the tune of 'physical weakness' of women, which he answered by stating that even bed-ridden men are carried to polls and allowed to vote²⁴. Thus, it is clear how dominating male personality and submissive females played a role in subverting the overall position of women in the society.

Through the discussions above the history of female suffrage has been briefly elucidated. After New Zealand having established Universal Adult Suffrage and Colony of South Australia having established Universal White Adult Suffrage in 1893 and 1894 respectively, it took over a decade for Finland to establish universal suffrage in 1906, becoming only the second country in the world and first in Europe to recognise women's right to vote and embrace universal suffrage.²⁵ Moreover, though New Zealand is the country where women were the first to gain the right to vote, but women were not able to stand for parliament in New Zealand until the Women's Parliamentary Rights Act, 1919 was brought into force. They were allowed in the Grand Duchy of Finland from 1906 itself. In the elections of 1907, 19 women (out of 200 seats in the parliament) were elected in the Parliament of Finland. After Norway giving universal suffrage in 1913, gradually and steadily other countries, especially European countries started adopting this practice. But it was only after the Second World War, when the era of Decolonization began and new Democracies took breath of freedom, there was a drastic growth in adoption of Universal Adult Suffrage by these new sprung States including India.

Various International and Regional Instruments have supported this struggle for Universal Suffrage. Now, the general provisions of these instruments call for equality in the right to vote and to stand as candidate in elections and along with them there are specific provisions that support these rights for women especially. And there are other international conventions and treaties that have been enacted to support rights of women specifically. One such instrument, which is dedicated mainly to uplift political position, is Inter-American Convention on the Granting of Political Rights to Women, which was entered into force in 1954.

²¹ African Commission on Human and Peoples' Rights. (n.d.). *African Charter on Human and Peoples' Rights*. Retrieved January 06, 2022, from <http://www.achpr.org/instruments/achpr/>

²² Freedom House. (2018, May 08). *Freedom in the World 2018: Democracy in Crisis*. Retrieved January 16, 2022, from <https://freedomhouse.org/report/freedom-world/freedom-world-2018>

²³ Hughes, J. L. (1895). *Equal Suffrage*. Toronto, Canada: W. Briggs. p. 14-21

²⁴ *Ibid* at p.35

²⁵ thisisFinland. (2018, October 19). *When everyone got the vote*. Retrieved February 07, 2022, from <https://finland.fi/life-society/when-everyone-got-the-vote/>

Despite of all these efforts, as reflected above, democratic freedom over-all is in shambles around the world, including for women. Women in several countries are still struggling for their democratic rights and it was as late as in 2015 when women of Saudi Arabia got the right to vote.²⁶ This struggle for the voting rights has taken forefront and the other and rather crucial associated rights with political freedom are lost somewhere in translation.

The right to take part in the government of his/her country directly i.e. contesting the elections is also an integral part of the duo of political rights. Secondly, only the possession of these rights is not enough. It is important these must be realised and participation of women in forming the parliaments of their nation as well as sub-division (states) must increase so as to become significant and indispensable.

Paxton et al. have produced the data and comparative analysis of degree of suffrage around the world²⁷ on completion of half a century of universal suffrage being accepted worldwide. This was in 2003 and according to them little attempt has been made to measure the degree of suffrage in a broad range of countries. They have carried out this meticulous task and have forged the path for further data collection. Today we have various quantitative tools contributing to collection of trends in suffrage across the world.

With the help of tools like these and contribution of Inter Parliamentary Union we have been able to gain an almost perfect insight in the present situation of suffrage and statistical data on the percentage of women in national parliaments. Rwanda tops the list of the percentage of women in national parliaments with 49 elected women out of 80 seats in the lower house of the nation making the percentage 61.3%. This feat was achieved through the national elections of September 2018.²⁸ India in this list lies at 144th rank with merely 14.9% women MPs. So, as to understand this situation, the study of Political rights with reference to India is necessary.

3.1 Development of Rights in Indian-Sub Continent in Pre and Post-Independence Era

At the very onset, when India received its independence and Constituent Assembly was enacted for constructing a Constitution, it was recognised that "Voting is a formal expression of preference for a candidate for office or for a proposed resolution of an issue."²⁹ Owing to this Universal Adult suffrage was adopted as a norm along with the coming in force of the Constitution of India. Today women are exercising this right with great vigour and in certain areas female voting percentage is greater than the males.

The other aspect of Political Rights is standing as a candidate and representing the populace in the assemblies. As a country with almost identical population of genders, but deep-rooted discriminatory tendencies for the fairer sex India has experienced gender discrimination since centuries. This problem of discrimination has been targeted through various provisions and programs for "protective discrimination". However, for a considerable time the field of politics was ignored when it came to curbing gender bias, as a result of which women representation is dismal in the lower house of the parliament as well legislative assemblies.

Here it is required to consider the steps taken for supporting this aim of increasing women participation in politics.

3.2 Steps taken and proposed to ensure and improve Women Participation

After 73rd and 74th Amendments of the Constitution of India in the years 1992 and 1993 respectively, women were granted 33% reservation in Panchayats and Municipalities. Now, there were many arguments that women are being allowed to stand in elections, is that not enough? If people would wish to elect the women candidates, they would cast vote in their favour.

²⁶ Women are still gaining the right to vote in 2015. (n.d.). Retrieved January 08, 2022, from <http://www.noceilings.org/voting-rights/#SAU>

²⁷ Paxton, P., Bollen, K. A., Lee, D. M. & Kim, H. (2003). A half-century of suffrage: New data and a comparative analysis. *Studies in Comparative International Development*, 38(1), 93-122. doi:10.1007/BF02686324

²⁸ Monthly ranking of women in national parliaments (2022). Retrieved January 22, 2022, from <https://data.ipu.org/women-ranking?month=1&year=2022>

²⁹ Ferguson, S. (2003). *The Right to Vote*. (L. Young, K. Rudelius-Palmer & I. Dikkers, Eds.). Study Guide. Retrieved January 17, 2022, from <http://hrlibrary.umn.edu/edumat/studyguides/votingrights.html>

However, this had been true if India had not been a male dominated and patriarchy-laden nation. There is a clear mind-set against the betterment, development and free status of women in the society. In this hostile environment neither the parties wish to grant women tickets to contest the election due to the fear of losing the seats, the people of the constituency also do not wish to cast vote in the favour of women candidates. Thus, 33% Reservation of women in politics is a means to ensure women participation in political arena.

Thus, this step is neither baseless and if the constitutional provisions are considered it also seems to be constitutionally valid. The Preamble to the Constitution of India emphasizes upon the Principle of Equality as basic to our Constitution.³⁰ Furthermore it states that there must be an "Equality of status of opportunity and to promote among them all Fraternity, Unity and Integrity". Art. 14 states that, "the state shall not deny any person equality before law or the equal protection of the laws within the territory of India." This includes the concept of bringing all the citizens of India on equal platform, which is possible only by class legislations and uplifting the position of the downtrodden. Especially, in *Chiranjit Lal v UOI*³¹ and the *State of Bombay v F. N. Balsara*³², it was stated that Art. 14 is designed to protect all persons placed in similar circumstances against legislative discrimination and if the legislature takes care to reasonably classify persons for legislative purposes and if it deals persons equally with all persons belonging to a well-defined class, it is not open to the charge of denial of equal protection on the ground that the law does not apply to other persons.^{33 34 35}

If any reservation for women is done in the parliament, can not be challenged for being violative of Article 14, 15 and 16 of the Constitution of India, however such reservation in favor of women is in tune with Right to Equality.³⁶ The Hon'ble Supreme Court has held that: "Article 14 does not bar rational classification. Question of unequal treatment does not arise if there are different types of circumstances. Equality of opportunity for unequals can only be an aggravation of inequality. Equality of opportunity, which admits discrimination with reasons, means rational classification for differential treatment having nexus with constitutionally permissible object."³⁷ The law providing for 33% reservation to women can not be said to be arbitrary as it has a distinct purpose and objective of uplifting women in this stringent male dominated society. And therefore it is reasonably classified. It has been well settled by Hon'ble Supreme Court that if the Legislature takes care to reasonably classify persons for legislative purposes and if it deals equally with all persons belonging to a well-defined class it is not open to the denial of equal protection on the ground that the law does not apply to other persons.^{38 39}

Furthermore, Art. 15 (3) prescribes for **protective discrimination** allowing the State to enact special laws for Women and Children.

In, view of the mandate of Constitution itself, with the support of Class Legislation and Protective discrimination, law providing for 33% Reservation to Women in Parliaments and State legislatures can be passed. Arbitrariness can be proved by showing that the state action is uninformed by reason in as much as there is no discernible principle on which it is based or it is contrary to the prescribed mode of exercise of the power or is unreasonable.⁴⁰

The purpose and the object of the law is well ascertained and the provisions are crystal clear that this law of 33% reservation is for the upliftment of women class and for their betterment in this orthodox male dominated society.

Also ICCPR, to which India is a signatory infers that "Reasonable discrimination between female and male for an object sought to be achieved is permissible."⁴¹

³⁰ *Indra Sawhney v. Union of India*, (2000) 1 SCC 168

³¹ *Chiranjit Lal v. Union of India*, (1950) SCR 869

³² *State of Bombay v. F.N. Balsara*, (1951) SCR 682

³³ *Kedar Nath Bajoria v. The State of West Bengal*, (1954) SCR 30

³⁴ *V.M. Choudhary & Co. v. The State of Andhra*, (1954) 1 SCR 117

³⁵ *Budhan Choudhary v. The State of Bihar*, (1955) 1 SCR 1045

³⁶ *Vijay Lakshmi v. Punjab University*, (2003) 8 SCC 440: AIR 2003 SC 3331

³⁷ *Re St. Stephen College v. University of Delhi*, 1992 (1) SCC 558: AIR 1992 SC 1630

³⁸ *State of West Bengal v. Anwar Ali*, (1952) AIR SC 75

³⁹ *Sakhawat Ali v. State of Orissa*, AIR 1955 SC 166

⁴⁰ *State of Maharashtra v. Manu Bhai Pragaji Vashi*, (1995) 5 SCC 730: (1996) AIR SC 7

⁴¹ Art. 2, International Covenant on Civil and Political Rights, 1966; *Supra* 15

It is argued by Manon Tremblay that women are equal citizens and therefore should share equally with men in public decision-making. By contrast, empirical theories define Democracy by the presence of institutions such as: Freedom to form and join organizations; Freedom of expression; the Right to vote in elections and to stand for public office; the Right of political leaders to compete for support and votes; Freedom of information and availability of alternative sources of information; free and fair elections; and institutions for making government policies that depend on votes and other expressions of preference.⁴²

The phenomenon of oppression, suppression, repression and logically depression of women, has constituted them as the weakest segment of the society of India. And this phenomenon is so patent that till only 11.8% and 11.4% women were as MPs in Lower House and Upper House respectively⁴³, therefore in words of Justice Holme's law providing for 33% reservation to women has a logical conclusion and result of the "felt necessities of times".

In **Maneka Gandhi v. Union of India**,⁴⁴ then Chief Justice Bhagwati J. had emphasized on the significance of the freedom of speech and expression in these words "Democracy is based essentially on free debate and open discussion, for that is the only corrective of govt. action in a democratic setup. If democracy means govt. of the people by the people, it is obvious that every citizen must be entitle to participate in the Democratic process and in order to enable him to brightly exercise his rights of making a choice, free and general discussion of public matters is absolutely essential.

Moreover, the contention that the Fundamental Right of males to contest or fight for each and every election at a seat of their choice is being and will be infringed by 33% reservation, then the contention that it is a Fundamental Right of every citizen to contest election has been rejected by the Apex Court, in its earliest years, in the case of **N.P. Ponnuswami v. The Returning Officer, Namakkal Constituency, Namakkal, Salem and Ors.**⁴⁵ by holding that: "The right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it."

It was also opined by Hon'ble Supreme Court in the case of **Jamuna Prasad Mukheriya v. Lachhi Ram**⁴⁶ that the right to contest an election is not a common law right but is a special right, created by statute, which can be exercised on the conditions, laid down by the statute. Similarly in the case of **Jyoti Basu v. Debi Ghosal**⁴⁷, this Hon'ble Court held that a right to elect, fundamental though it is to the democracy but is not fundamental right, nor a common law right.

Even after the expiry of the several decades of Independence, the dawn of freedom is yet to bestow a willing smile on women. Liberty, equality and Fraternity, so richly enshrined in the Constitution of India have still to acquire any meaningful proposition for most of them.

From previewing the decisions above it is clear that it is a settled law that right of franchise or the right to a public office by the democratic process is not fundamental right and this law nowhere infringe any essential features of the Basic Structure of the Constitution and on the other hand, retention of the safeguards and protection of special reservations to the weaker sections would strengthen the essential features of real democracy with equal opportunity and equal status, which is in consonance with the Preamble of the Constitution.

Thus, by implementing the law providing for 33% Reservation to women in Parliament and State legislature, the essential feature of the Basic Structure of the Constitution in respect of democracy giving equal opportunity to all citizens in the matter of adult franchise and proper representation in the Legislature will rather be strengthened.

5. CONCLUSION AND SUGGESTIONS

⁴² Tremblay, M. (2007). Democracy, Representation, and Women: A Comparative Analysis. *Democratization*, 14(4), 533-553. doi:10.1080/13510340701398261

⁴³ *Supra* 28

⁴⁴ (1978) AIR 597

⁴⁵ (1952) 1 SCR 218

⁴⁶ (1955) 1 SCR 608

⁴⁷ (1982) 3 SCR 318

For resolution of the problem it is necessary to seek its source first. In India all the problems with respect of Women arises due to the role that the women play in the patriarchal society of India. Be it female foeticide, education of women or political representation, women have been the victims of prejudices of the society. Today Women are working shoulder to shoulder along with their spouses and counterparts in financially assisting their households. Even these women are not properly respected, then what protection can be guaranteed for the women that are handling the household work and raising their children. This is the most important work that a person can perform in support of their families, however this important work is ignored and women are ignored along with it.

This is the reason that society and disregards the importance of women and due to this perception the participation of women in the voting process as well as their representation in politics of the country also suffers a setback. Women were able to break the barrier of 10% representation in the Parliament after 62 years of Independence in 2009. The data provided by Inter Parliamentary Union also clarifies that India is even behind many other developing countries in Women representation. With roughly 25.9% of parliamentarians globally being women as of January 1st, 2022 and only 60 countries in the world having 30% or more women ministers till now in Lower Houses of Parliament in the World, the women also lack the requisite Decision-Making Power in a political structure globally.^{48 49}

There is no doubt that steps have been taken to resolve the situation and one third seats have been reserved for women at the grass-root levels of government that is in the Panchayats and the Municipalities. Here, the researcher has not discussed effective representation, as that is a matter of completely different discussion. The idea behind increasing the Women representation in assemblies is that a person who has internally been affected by a problem can best address the same in a society. As representative a woman would be able to understand and resolve the problem of other females in the society in a better manner. The same reason is extended to the reservation of other representatives belonging to Scheduled Castes, Scheduled Tribes and other minorities in the parliamentary houses. Upliftment of the women and the gender gap is one of the most important issues in India. The directive principles of state policies and the fundamental rights made it compulsory for Indian government which work as a welfare state to better the position of women in India.

Who would be better to address these problems than a woman representative herself? Therefore, a law for 33% reservation for women is need at state and central level also. The Bill has been pending since over a decade in the parliament with no avail. The discussion above has clarified as to how such a law will not be against the constitutional spirit and is in consonance with various international conventions.

It was noted by the Hon'ble High Court of Rajasthan that Democracy may need a nudge to prosper. In the judgment Dr. Radhakrishnan's observation in his famous Upton lectures of 1926 was quoted. It states, "There can be no real freedom in any section or class in a society so long as others are in bondage. It is truly Democratic ideal that is uttered in the words, "May all cross safely the difficult places of life, may all see the face of happiness, may all reach that right knowledge, may all rejoice everywhere", (sarvah taratu durgani sarvah bhadrani pasvatu sarvas tad buddhim appam sarvas sarvata nandatu)⁵⁰ Thus, without taking concrete steps to increase the participation of women in political arena, the problem of insufficient representation of women in parliaments and legislatures will not be resolved. Apart from the 33% reservation other initiatives to imbibe the spirit of democracy in women should also be undertaken. This can be done by educating them about the importance of their political rights and at the most basic level they must also be made to understand the power of the elections for betterment of their rights.

Many platforms for women upliftment and even International Declarations have proposed actions that need to be undertaken so as to improve and strengthen the Political Participation and Decision-Making Power of Women around the World. Most notable is the action plan of the Fourth World Conference on Women in Beijing, China, which was organised in September of the year 1995. The Declaration identified 12 critical areas of concern and outlined actions to be taken in each of these

⁴⁸ Global and regional averages of women in national parliaments (2022). Retrieved January 22, 2022, from <https://data.ipu.org/women-averages?month=1&year=2022>

⁴⁹ *Supra* 28

⁵⁰ Vichitra Banwarilal Meena v. Union Of India And Ors., AIR 1982 Raj. 297

areas in order to create a better world for women. The role of women in power and decision-making was among these areas of concern.⁵¹ Some of the proposed steps are for Governments to set specific targets and implement measures to substantially increase the number of women in leadership and decision making, review and reform electoral systems to encourage women's electoral participation, encourage involvement of women in decision making and provide training and mentorship programs to women and for political parties to revise party structures and eradicate the procedures that hinder the participation of women, ensure women participation in internal policy making and incorporate gender issues in their political agendas.

These action plans are quite specific and result-oriented, however the progress has been disparagingly slow. The task needs to be undertaken by the women themselves, who need to rally for their rights. What needs to be kept in mind here is that equality in political power and decision-making is the ultimate means to achieve over-all equality.

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⁵¹ Iknow Politics. (2017, October 16). *Increasing women's political participation according to the Beijing Declaration.* Retrieved February 04, 2022, from <http://iknowpolitics.org/en/learn/knowledge-resources/increasing-womens-political-participation-according-beijing-declaration>