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Conditional Equality: The Constitutional Politics of Delay in India's Women's Reservation Law

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Abstract

The constitutional representation of women's commission went through a rough and tumble 30-year journey from the Women's Reservation Bill of 1996 to the Constitution (One Hundred and Sixth Amendment) Act, 2023, commonly referred to as Nari Shakti Vandan Adhiniyam. Articles 330A and 332A, which guarantee a third of the seats in the Lok Sabha and State Legislative Assemblies, respectively, for women, were inserted into the Act but their operation was postponed to the first delimitation exercise after the commencement of the Act, and hence, women's representation was delayed for several electoral cycles. This paper critically analyzes the legal structure of this conditionality clause and the latest legislative amendment which aimed at fast-tracking the process by removing the reservation criteria from the pending decennial census, namely the Constitution (131st Amendment) Bill, 2026. The paper chronicles the defeat of this corrective bill in the Lok Sabha on 17 April 2026 by 54 votes from the two-thirds special majority required under Article 368, thus continuing the ambiguity over women's substantive political participation. The paper submits that a conditional constitutional promise for gender parity, based on doctrinal legal considerations and the Parliamentary minutes and contemporised reportage, becomes a mere symbolic act. It situates this domestic struggle in the international context of India's obligations under CEDAW and the Beijing Platform for Action, and makes a contrast with the immediately operative reservation, granted to women at the panchayat and municipal level under the Seventy-Third and Seventy-Fourth Amendments. It ends by suggesting to delink the reservation from the delimitation, embed enforceable timelines and adopt rotation without relying on the decennial census outcomes.

Keywords: Women's Reservation, Nari Shakti Vandan Adhiniyam, Constitutional Amendment, Political Participation, Delimitation.

Introduction

Political representation is considered the most important right through which other rights are achieved because legislatures is where the very laws that regulate

women's access to education, property, employment and bodily autonomy are made. Despite the fact that India has a constitutionally guaranteed formal equality of women enshrined under Articles 14, 15, and 16¹, women continue to be a minority in Parliament and State Legislative Assemblies, even though they form roughly half the electorate. The Constitution (One Hundred and Sixth Amendment) Act, 2023, which was passed after almost three decades of legislative failures, aimed to rectify this situation by including one-third of seats for women. The same Amendment, which was to be carried within it, however, contained a self-defeating clause, because it was to be enacted on the basis of a future census and delimitation exercise, and this could be well into the next decade before the new representation occurs. This paper attempts to trace the legal history of that reservation, looks at the structure and deficiencies of the 2023 Amendment, and critically assesses the proposed Constitution (131st Amendment) Bill, 2026, which tried, but failed, to eliminate that very problem. The paper thus asks a key question of modern constitutional law: how is a right to be meaningfully guaranteed when its enforcement is to depend on events that are beyond the control of a majority of the population that is required to ratify it?

The Long Legislative Journey: 1996 to 2023

The attempt to have women as a reserved category in Parliament & State Assemblies has been undertaken by five governments within twenty-seven years. It started on 12 September, 1996 with the introduction of the Constitution (Eighty-First Amendment) Bill by the H.D. Deve Gowda government in the United Front government and the Bill was placed before a Joint Parliamentary Committee but lapsed with the dissolution of the 11th Lok Sabha. It was revived during the Vajpayee government in 1998 as the Constitution (Eighty-Fourth Amendment) Bill and lapsed again this time around, when there was a lot of opposition calling for a sub-quota for Other Backward Classes (OBCs) in the quota available to women. An attempt was made once again in 1999. The Bill was revived in 2008 in the form of the Constitution (One Hundred and Eighth Amendment) Bill in the first UPA government of Manmohan Singh, the Rajya Sabha passed it on 9 March, 2010 by 186 votes to 1² but it was never introduced in Lok Sabha and lapsed with the dissolution of the 15th Lok Sabha in 2014. The Bill was re-introduced as the Constitution (One Hundred and Twenty-Eighth Amendment) Bill on 19 September, 2023 in a special session of Parliament at the new Parliament building and came to be known as the Nari Shakti Vandan Adhiniyam. It was passed by the Lok Sabha by 454 votes to 2 (from the All India Majlis-e-Ittehadul Muslimeen (AIMIM) with 214 members present in the Rajya

¹The Constitution of India, 1950, arts. 14, 15 & 16.

²Anantam IAS. (2026, May 1). 106th Amendment of Indian Constitution: Women's Reservation Act explained. <https://anantamias.com/106-amendment-of-indian-constitution/>; Ensure IAS. (2026, February 24).

Sabha voting unanimously in favour¹. The Bill was assented to by the President on 28 September, 2023, and became the Constitution (One Hundred and Sixth Amendment) Act, 2023.

Constitutional Architecture of the 106th Amendment

The 106th Amendment made three new changes to the Constitution, and amended one existing provision. Article 330A reserves nearly one-third of seats for women in Lok Sabha (apart from seats reserved for women in SC/ST category) Article 332A is an extended version of the same scheme to the State Legislative Assemblies while Article 239AA was modified to include the Legislative Assembly of the National Capital Territory of Delhi in the same scheme. More critically, the Amendment does not apply to the indirect electoral body of the Rajya Sabha or the State Legislative Councils, and does not make a separate reservation for women from the Other Backward Classes (OBCs) which several Members of the Opposition raised in the 2023 debate.² In India, although a party must have a fixed percentage of female candidates as mentioned in some democratic countries, the constituencies are not opened to the contest on a fixed basis but are opened on a rotational basis for a fixed period for a particular year.

Article 334A: The Conditionality Clause and the Politics of Delay

The 106th Amendment's transformative promise is tempered by Article 334A, which stipulates that the reservation is to come into effect only when delimitation is carried out based on the first census after the amendment's commencement. When the Amendment was passed in 2023, the government projected this would allow implementation from 2029, assuming a census shortly after the 2024 general election.³ That census has still not been conducted, however, so the 2029 timeline has already slipped, and the earliest realistic date under the plain text of Article 334A now depends entirely on when the census is held and how long delimitation subsequently takes. This conditionality turned what appeared to be an immediate constitutional right into a deferred promise, subject to administrative machinery largely controlled by the Union Executive. From a constitutional law standpoint, the doctrine of harmonious construction cannot permit a remedy for gender imbalance in representation to remain a dead letter through indefinite postponement. The delay contrasts starkly with the Seventy-Third and Seventy-Fourth Amendments of 1992–

¹Deccan Herald. (2023, September 20). Lok Sabha passes Women's Reservation Bill with 454-2 majority. <https://www.deccanherald.com/amp/story/india%2Flok-sabha-passes-womens-reservation-bill-with-454-votes-in-favour-2694119>; News On Air. (2023, September 22). Parliament passes Women's Reservation Bill. <https://www.newsonair.gov.in/parliament-passes-womens-reservation-bill>

² Model Diplomat. (2026, June 22). 106th Constitutional Amendment Act (Women's Reservation). <https://modeldiplomat.com/learn/glossary/106th-constitutional-amendment-act>

³The Wire. (2023, September 20). Lok Sabha passes Women's Reservation Bill, Amit Shah confirms implementation not before 2029. <https://m.thewire.in/article/government/lok-sabha-passes-womens-reservation-bill-amit-shah-implementation-2029>

93, which reserved one-third of panchayat and municipal seats for women and were implemented immediately, without any census-delimitation precondition.¹

The Constitution (131st Amendment) Bill, 2026: An Attempted Corrective

Recognising the practical injustice embedded in Article 334A, the Union Law Minister introduced the Constitution (One Hundred and Thirty-First Amendment) Bill in the Lok Sabha on 16 April 2026, alongside the Delimitation Bill, 2026 and the Union Territories Laws (Amendment) Bill, 2026. The 131st Amendment Bill sought to operationalise the one-third reservation without waiting for the next census, by permitting delimitation to be conducted on the basis of the existing 2011 Census data, with the stated aim of implementing the reservation by 2029. As part of the same legislative package, the Bill also proposed to expand the Lok Sabha from 543 to 850 seats, comprising 815 seats allocated to the States and 35 to the Union Territories.²

The Bill was put to vote on 17 April, 2026. Being a Bill to amend the Constitution, it had to pass a majority of the total membership of the House and a majority of not less than two-thirds of the members present and voting under Article 368. With a total of 528 members participating, the required two-thirds threshold stood at 352 votes. The Bill secured only 298 votes in favour, with 230 votes against, falling fifty-four votes short of passage. Lok Sabha Speaker Om Birla accordingly declared that the Bill could not proceed for want of the required special majority. The Government had to remove the two allied Bills of delimitation of areas and Union Territory laws and the House was adjourned sine die, paving the way for the end of the legislative movement of the session.³

Critical Analysis: Why the Corrective Bill Failed

The loss of the 131st Amendment Bill was not attributable to any opposition to women's political representation as such; indeed, all the major parties publicly professed that there was a general support for the underlying principle. Instead, the opposition INDIA bloc led by the Congress, Trinamool Congress, Dravida Munnetra Kazhagam and Samajwadi Party, raised concerns about the process of the Bill incorporating women's reservation under a new delimitation exercise and a significant increase in Lok Sabha seats. This resistance was driven by two concerns in the Constitution. First, members of the opposition contended that any guarantee that their States would be represented proportionately should have been explicitly

¹Sociology.Institute. (2026, March 9). The 73rd and 74th Amendments: Milestones in Indian local governance. <https://sociology.institute/india-democracy-development/73rd-74th-amendments-indian-local-governance/>

² Wikipedia. (2026a, July 15). Constitution (131st Amendment) Bill, 2026. [https://en.wikipedia.org/wiki/Constitution_\(131st_Amendment\)_Bill,_2026](https://en.wikipedia.org/wiki/Constitution_(131st_Amendment)_Bill,_2026)

³In a first, Modi gov't's delimitation-Lok Sabha expansion plan fails in Parliament. <https://m.thewire.in/article/politics/major-setback-modi-govts-constitution-amendment-bill-delimitation-fails-in-lok-sabha>

included in the text of the Bill itself, not in verbal assurances that this was the case, given genuine federal concerns that delimitation based on the updated population figures would reduce the relative political weight of southern States that have enjoyed the benefit of lower population growth through successful family planning, and increase it for more populous States in the north. Second, several members demanded that women's reservation be delinked entirely from delimitation and seat expansion, so that the constitutional promise of 2023 could be honoured immediately on the existing 543 seats, without being held hostage to a larger and more contentious restructuring of India's electoral map.

This episode is a good illustration of a well-documented pattern in Indian constitutional politics: rules that are meant to benefit a historically marginalised group are often tied up in an unrelated structural reform with its political consequences which makes the fate of the former contingent on the consensus, or lack of it, about the latter. The need for a special majority in accordance with Article 368¹ is a legal necessity to ensure that a change of the constitutional scheme of things has widespread cross-party endorsement. In this case, however, the very mechanism that was meant to ensure constitutional stability became the one that was used to block an expedient effect on the constitutional amendment, despite the fact that 298 out of the 528 members present voted in favour of the amendment.²

Limits of Legislative Conditionality and the Basic Structure of the Consitution

As was reiterated in *I.R. Coelho v State of Tamil Nadu*³, the amending jurisdiction of Parliament under Article 368⁴ is not unlimited; it cannot be exercised to upset the basic structure of the constitution as reiterated in *Kesavananda Bharati v State of Kerala*⁵. No court has yet been brought to the question of the constitutionality of the conditionality clause in Article 334A, but it is a doctrinal question of first importance whether Parliament can add a substantive equality guarantee to the Constitution and then attach a condition to the implementation of the guarantee that is so vague that it is impossible to see whether it will ever come into effect during the lifetime of most of the sitting members of Parliament who voted for it. Together with the constitutional value of substantive, rather than formal, equality affirmed by the Court's affirmative-action jurisprudence, equality of political opportunity in Articles 14 and 15⁶ requires that the reservation provisions be made effective within a reasonably predictable time frame. A right that is dependent upon an "open-ended"

¹ The Constitution of India, art. 368.

² Outlook India. (2026, April 17). 131st Amendment Bill on women's reservation defeated in Lok Sabha. <https://www.outlookindia.com/national/131st-amendment-bill-on-womens-reservation-defeated-in-lok-sabha>;

³ *I.R. Coelho v. State of Tamil Nadu*, (2007) 2 SCC 1.

⁴ *Ibid* at 9.

⁵ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

⁶ *Ibid* at 1.

administrative exercise that is entirely under the discretion of the Union Executive, is not at ease with the constitutional guarantee of representation as an entitlement and not a discretionary concession. There is nothing to suggest that Article 334A is currently unconstitutional, as no sunset clause or judicial decision has yet been made to test it; it does, however, assert that the provision sits within a constitutionally uncertain zone that will require further litigation and/or amendment to the Constitution in the future.

Comparative and International Dimensions

India's progress towards gender parity in legislatures can be gauged against its international obligations. Under Sustainable Development Goal 5, India — a signatory to CEDAW, ratified on 9 July 1993¹, and a participant in the Beijing Platform for Action — has repeatedly affirmed the importance of women's political participation to substantive equality and governance. Immediate, rather than deferred, reservation has produced strong results elsewhere: Rwanda's constitutionally mandated 30% quota, adopted in 2003, has given it the highest share of women in any national parliament, exceeding 60% in recent elections². India's own local-government experience offers the closest comparison: panchayat and municipal reservations under the 73rd and 74th Amendments began without any census precondition and have generated more than a million elected women representatives at the grassroots level³, widely cited as evidence that reservation succeeds when implemented immediately.

Recommendations

First, Parliament should consider amending Article 334A to delink the commencement of women's reservation from the pending decennial census and delimitation exercise, allowing the existing seat structure to be used for rotation of reserved constituencies in the interim, as was substantially proposed, though ultimately rejected, in the 131st Amendment Bill. Second, any future delimitation exercise bundled with women's reservation should carry an explicit constitutional guarantee protecting the proportional seat share of States that have achieved demographic stabilisation, so as to address legitimate federalism concerns without derailing the underlying gender-equality reform. Third, a sub-reservation for women belonging to Other Backward Classes should be considered, given that its absence in the 2023 Act leaves a significant section of women without a targeted representational guarantee. Fourth, given the demonstrated success of immediately

¹UN Women Asia-Pacific. (n.d.). CEDAW | India. <https://asiapacific.unwomen.org/en/countries/india/cedaw>

²UN Women. (2018, August). Revisiting Rwanda five years after record-breaking parliamentary elections. <https://www.unwomen.org/en/news/stories/2018/8/feature-rwanda-women-in-parliament>; Statista. (2026, February 6). Countries with largest share of women in parliament 2025. <https://www.statista.com/statistics/267028/women-in-selected-national-parliaments/>

³Ibid at 6.

operative reservation at the local government level, the Union Government should explore staged or partial implementation of legislative reservation using current seat numbers, rather than treating full seat expansion as a precondition for any representation at all.

Conclusion

The Constitution (106th Amendment) Act, 2023 represented a historic legislative acknowledgment, after nearly three decades of failed attempts, that women's descriptive presence in India's legislatures must be constitutionally guaranteed rather than left to the vagaries of party nomination. Yet the deferral built into Article 334A, and the subsequent defeat of the corrective Constitution (131st Amendment) Bill, 2026 in the Lok Sabha on 17 April 2026, together demonstrate that a constitutional right whose enforcement is made conditional upon future political consensus remains, in practical terms, an aspiration rather than an entitlement. The episode offers a cautionary lesson for constitutional design: reforms intended to empower marginalised groups should, wherever possible, be insulated from being traded off against unrelated structural questions such as seat expansion and delimitation, lest the promise of representation be repeatedly deferred even as the underlying commitment to gender equality remains formally unchallenged. Until the Indian Parliament finds the political will to convert this promise into immediately enforceable practice, the journey from silence to strength that women in India have travelled across generations will remain, in the specific arena of legislative representation, an unfinished one.

References

1. Anantam IAS. (2026, May 1). *106th Amendment of Indian Constitution: Women's Reservation Act explained*. <https://anantamias.com/106-amendment-of-indian-constitution/>
2. The Constitution of India, arts. 14, 15, 16, 368.
3. Deccan Herald. (2023, September 20). *Lok Sabha passes Women's Reservation Bill with 454-2 majority*. <https://www.deccanherald.com/amp/story/india%2Flok-sabha-passes-womens-reservation-bill-with-454-votes-in-favour-2694119>
4. Drishti IAS. (2026, April 21). *Defeat of the Constitution (131st Amendment) Bill, 2026*. <https://www.drishtias.com/daily-updates/daily-news-analysis/defeat-of-the-constitution-131st-amendment-bill-2026>
5. Ensure IAS. (2026, February 24). *106th Constitutional Amendment Act: Nari Shakti Vandan Adhiniyam, key provisions, and strategic significance*. <https://www.ensureias.com/blog/general/106th-constitutional-amendment-act-nari-shakti-vandan-adhiniyam-key-provisions-and-strategic-significance>
6. I.R. Coelho v. State of Tamil Nadu, (2007) 2 SCC 1.

7. Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.
8. Model Diplomat. (2026, June 22). *106th Constitutional Amendment Act (Women’s Reservation)*. <https://modeldiplomat.com/learn/glossary/106th-constitutional-amendment-act>
9. News On Air. (2023, September 22). *Parliament passes Women’s Reservation Bill*. <https://www.newsonair.gov.in/parliament-passes-womens-reservation-bill>
10. Outlook India. (2026, April 17). *131st Amendment Bill on women’s reservation defeated in Lok Sabha*. <https://www.outlookindia.com/national/131st-amendment-bill-on-womens-reservation-defeated-in-lok-sabha>
11. Sociology.Institute. (2026, March 9). *The 73rd and 74th Amendments: Milestones in Indian local governance*. <https://sociology.institute/india-democracy-development/73rd-74th-amendments-indian-local-governance/>
12. Statista. (2026, February 6). *Countries with largest share of women in parliament 2025*. <https://www.statista.com/statistics/267028/women-in-selected-national-parliaments/>
13. The Wire. (2023, September 20). *Lok Sabha passes Women’s Reservation Bill, Amit Shah confirms implementation not before 2029*. <https://m.thewire.in/article/government/lok-sabha-passes-womens-reservation-bill-amit-shah-implementation-2029>
14. The Wire. (2026, April 18). *In a first, Modi govt’s delimitation-Lok Sabha expansion plan fails in Parliament*. <https://m.thewire.in/article/politics/major-setback-modi-govts-constitution-amendment-bill-delimitation-fails-in-lok-sabha>
15. UN Women. (2018, August). *Revisiting Rwanda five years after record-breaking parliamentary elections*. <https://www.unwomen.org/en/news/stories/2018/8/feature-rwanda-women-in-parliament>
16. UN Women Asia-Pacific. (n.d.). *CEDAW | India*. <https://asiapacific.unwomen.org/en/countries/india/cedaw>
17. VisionIAS. (2026, April 20). *Constitution (131st Amendment) Bill defeated in Lok Sabha*. <https://www.visionias.in/blog/current-affairs/constitution-131st-amendment-bill-defeated-in-lok-sabha>
18. Wikipedia. (2026a, July 15). *Constitution (131st Amendment) Bill, 2026*. [https://en.wikipedia.org/wiki/Constitution_\(131st_Amendment\)_Bill,_2026](https://en.wikipedia.org/wiki/Constitution_(131st_Amendment)_Bill,_2026).

