

THE TIMES OF INDIA, BOMBAY, 23 MAY 2008

Lurching towards equality

Ratna Kapur

A34
/101

The introduction of the Women's Reservation Bill in the Rajya Sabha is a move that should, in the normal course of events, be celebrated. Yet it remains critical to reflect on the agonising journey endured by this piece of legislation, which speaks volumes about India's commitment to gender equality.

Note how our neighbour, Nepal, has achieved a startling 33.2 per cent representation of women in the recent constituent assembly elections, despite a decade of conflict and political instability. This victory places Nepal at number 15 in the world in terms of representation of women in parliament. Other countries in the region such as Pakistan ranks 43 and Afghanistan is at 26. War-torn Iraq ranks 32, while Rwanda tops the list at number 1. However, India is 105 out of 135 countries that have been ranked in terms of the percentage of women representatives in parliament.

It is shameful that the Women's Reservation Bill has taken nearly 12 years to finally be tabled in the upper House. The Bill tabled in the Rajya Sabha does nevertheless represent a sign that India's democracy is lurching in the right direction as far as gender equality is concerned. An important feature of the Bill is that it is cast as a temporary special measure to enable women, who have been historically and structurally disadvantaged, to participate and compete effectively in the political arena. There are also provisions for one-third representation of women from scheduled castes and tribes within the 33 per cent reservation category for women, with a phase-out of these measures when the disadvantage has been remedied.

The articulation of equality within the framework of disadvantage marks a distinct and significant shift in the way women have been historically addressed in law. Women have invariably been regarded as weak, inferior and vulnerable and hence in need of protective measures that have frequently reinforced gender stereotypes and used to deny women equal rights. Or they have been treated the same as men. While formal equal treatment with men is important in areas such as voting,

ignoring gender differences, such as pregnancy, have failed to address the ways in which differences have historically been used to discriminate against women.

Fortunately, both the legislature and courts are moving away from a model of gender equality based on protection and shifting towards one that recognises and provides remedies for discrimination produced through historical disadvantage. The recent Supreme Court decision on women bartenders illustrates this shift. The case involved a challenge to a provision in the Punjab Excise Act of 1914 prohibiting employment of any woman in places where the public consumed liquor or intoxicating drugs.

The provision was challenged as violating the equality provisions of the Constitution. The court agreed. It held that instead of prohibiting women's employment in the bars altogether, it was incumbent on the state to ensure a secure environment for women. Any initiative that interfered with this right to livelihood would be discriminatory.

A similar expansion of the recognition of the changing place and role of women in contemporary India can be found in the Delhi high court's recent judgment on the scope of the new domestic violence law. The Act was challenged on the grounds that it provided protection only to women. The court held that the Act had to be read as carrying out the objects of the equality clause, that is equality in result, and hence difference in treatment per se could not be read as being discriminatory. As domestic violence was an experience that empirically was overwhelmingly experienced by women, there was no justification that the Act discriminated against men. The court went further by holding that the Act was not confined in its application to married women, but that the term 'domestic relationships' was to be broadly defined and include live-in relationships and mistresses.

While there is a perceptible change taking place in the legal arena, it is incumbent on our political representatives to begin to recognise and actively facilitate women's equal rights.

The writer is director, Centre for Feminist Legal Research.



THE TIMES OF INDIA, BOMBAY, 31 JAN 2008