
THE CONSTITUTIONAL PARADOX OF DEFERRED EQUALITY: A LEGAL ANALYSIS OF THE CENSUS– DELIMITATION LINKAGE IN THE 106TH AMENDMENT

Mr. Kamal Jeet, Ph.D. Research Scholar, Law, Maharshi Dayanand University- Centre for
Professional and Allied Studies, Gurugram

Prof. Dr. Virender Sindhu, Professor (Law), Maharshi Dayanand University- Centre for
Professional and Allied Studies, Gurugram

ABSTRACT

This article on the “Constitutional Paradox” is about the Constitution (106th Amendment) Act, 2023 which stipulates a historic one-third political quota for women. By elevating gender parity to the status of a constitutional directive, the addition of Article 334A legalises the realisation of this substantive right to two occurrences that are contingent upon the future and are uncertain: a post-enactment census and a subsequent nationwide delimitation exercise. This link provides an effective regime of “Deferred Equality.” The paper discusses the legal tension created by this regime and contends that the subjection of a guaranteed democratic entitlement to the indefinite suspension of administrative prerequisites arguably violates the “Basic Structure” of the Constitution and breaches the “Doctrine of Reasonable Expectation.”

This paper considers the administrative necessity and political implications of these procedural conditions, with particular attention to the relationship between Articles 81, 82 and 334A. The paper interrogates this framework to show how the current legislative architecture has left the realisation of women’s political rights in a deep “Constitutional Limbo”. The article finally concludes that this dependency is a tool for political expediency and proposes a legal decoupling of the reservation from the census-delimitation processes for timely implementation.

Keywords: Basic Structure Doctrine, Article 334A, Census-Delimitation, Constitution, Election Laws, 106th Constitution Amendment.

INTRODUCTION

The history of India's constitutional democracy is a chronicle of ongoing attempts to undermine the power of patriarchy at the highest levels of its legislature. Over the 7 decades of democratic rule, women's political representation has grown at a snail's pace from a meagre 4.4% in the first Lok Sabha (1952-1957) to a measly 14.4% in the 2019-2023 term. In the fundamentally hostile and cut-throat arena of Indian politics, where male party domination often relegates women to proxy representation or tokenism, quick and substantive constitutional action has long been regarded as a requirement.

Amid such systematic marginalisation, the Parliament of India passed the Constitution (One Hundred and Sixth Amendment) Act, 2023, popularly called Nari Shakti Vandan Adhiniyam. This Act marks a significant stride in the quest for gender parity, bringing to a close a tempestuous legislative journey that began with the introduction of the 81st Amendment Bill in 1996. The bill adds new constitutional provisions namely, Articles 330A and 332A, and amends Article 239A to provide for one-third (33%) reservation for women in the Lok Sabha, the State Legislative Assemblies and the Legislative Assembly of the National Capital Territory of Delhi.

But a careful legal reading of the Amendment discloses a fundamental constitutional conundrum. Through the introduction of Article 334A, the fruition of this long contested right is explicitly made contingent upon two administrative prerequisites: the release of the first decennial census after enactment and a following nationwide delimitation exercise. This statutory proviso effectively creates a regime of 'deferred equality'. While the Amendment ostensibly elevates substantive gender parity to a constitutional imperative, Article 334A suspends its implementation, transforming a substantive democratic right into a procedural mirage. Since the delimitation procedure is constitutionally suspended until the first census after 2026 is published, the operationalisation of women's reservation is necessarily delayed until the 2029, or possibly the 2034 or 2039, general elections.

This legislative delay raises significant legal problems about the effectiveness of the Nari Shakti Vandan Adhiniyam in eliminating deep-rooted structural impediments. The paradox of providing a basic democratic entitlement while at the same time suspending its operation lays bare a serious tension between procedural compliance and substantive democracy. The

postponement allows the existing patriarchal order to remain intact for the time being, essentially fulfilling a promise of equality at some undefined point in the future, while shielding present political systems from the immediate impact of the policy.

And yet, at the same time, the very form of the legislation shows a glaring intersectional inadequacy. The Act provides for horizontal sub-quotas for women belonging to the Scheduled Castes and Scheduled Tribes within their current quotas, but is completely quiet on the inclusion of Other Backward Classes women. Such exclusion does not include the combined socio-economic and political difficulties that OBC women confront, therefore rupturing the holistic pursuit of justice and defying the intersectionality framework that is required for real political empowerment. The absence of an OBC sub-quota, and the indefinite postponement in the implementation of the Act, may well prevent the legislation having an immediate transformational impact.

The central legal question in this study is consequently whether the constitutional validity and rationale for the census-delimitation nexus in Article 334A can be sustained. Why should a basic right to representation be subject to an administrative redistribution of territorial constituencies? While official discourse argues that the conditionality of delimitation for reservation provides a transparent mechanism for the rotation of seats,, critical juristic analysis highlights its operation as an instrument of political expediency, leading to unforeseen consequences that delay the political agency of women.

This paper critically engages with the interplay of Article 334A, the hold on delimitation and the systemic exclusion of OBC women to explain the constitutional contradiction of the 106th Amendment. It will consider whether the deferred implementation framework is constitutionally necessary or is a structural hindrance that hinders the deconstruction of gendered power inequalities in Indian jurisprudence.

The legislative framework of Article 334A. Article 334A is the procedural fulcrum of the Constitution (One Hundred and Sixth Amendment) Act, 2023, which painstakingly controls the enforcement of the substantive rights created in Articles 330A, 332A and 239AA. Article 334A, therefore, does not create an immediate constitutional imperative, but rather a scheme of delayed application. Close examination of its language reveals a planned architecture of contingent criteria that legally reduce the realisation of women's political reservation to broader administrative procedures.

ARTICLE 334A

Article 334A(1) commences with a non-obstante clause that negates the immediate application of the newly inserted reservation clauses. It unambiguously prescribes a two-step administrative process for the “coming into effect” of the reservation: a publishing of the appropriate numbers for the first census after the legislation and a delimitation exercise for the purpose.

Importantly, this article also establishes a sunset provision, providing that the reservation “shall cease to have effect on the expiration of a period of fifteen years from such commencement”. The 15-year limitation does not stem from the date of enactment of the Act (2023), but from the future date when the post-census delimitation is finalised, from a purely jurisprudential standpoint. Within this linguistic construction, the policy's 15-year operational life is preserved from being eroded by administrative delays, but at the same time the right itself is subjected to an indefinite temporal suspension, constructed by the text.

Clause (2) provides that Parliament may prolong the reservation beyond the first 15-year sunset term, thus rendering the expiration conditional and not absolute and subject to further parliamentary discretion. Clause (3) makes the notion of rotation a constitutional one, by making it mandatory that the special seats earmarked for women shall rotate following each future delimitation process. Theoretically, rotation has prevented the permanent monopolisation of certain constituencies and ensured over time the parity of the geographic distribution of seats, but has created a practical disincentive for elected women to develop a constituency over a long period of time, as the seat may be de-reserved in the next electoral cycle. Clause (4) is a normal constitutional precaution stating that the modification will not impact the representation in the present Lok Sabha or State Legislative Assemblies till their dissolution respectively. This prevents the current political composition from being challenged immediately in court or from being forced into dissolution early on the basis of the new equitable mandate.

CENSUS-DELIMITATION NEXUS

Article 82 and Article 170(3) of the Constitution. The legal relationship between “first census” and the later “delimitation exercise” inherent in Article 334A (1) must be studied through the prism of these two articles. Under the Eighty-Fourth Amendment Act, 2001, the re-adjustment

of territorial constituencies has been frozen till the publishing of the first census after the year 2026. With the decennial census of 2021 indefinitely deferred, the so-called “first census” under Article 334A is virtually deferred to the 2031 cycle, the findings of which may not be revealed until 2032 or thereafter.

By anchoring the women’s reservation in this precise order, Article 334A makes the substantive right to equality subject to the procedural friction of demographic enumeration and geographical boundary-drawing. There can be no delimitation without a census and no implementation of women’s reservation without delimitation. This makes a strict chain of dependencies that in itself ensures that the 106th Amendment cannot affect the 2024 or 2029 general elections. This illustrates a gulf between pronouncement of a constitutional right and its tangible implementation.

LEGISLATIVE INTENT AND PARLIAMENTARY REASONING

The census-delimitation link was a matter of intense debate during parliamentary discussions, highlighting the strategic rationale behind Article 334A. The Union Government, led by Home Minister Amit Shah and Law Minister Arjun Ram Meghwal, contended that the application of a 33% quota in an ad-hoc fashion, without the intervention of a quasi-judicial Delimitation Commission, would be constitutionally fragile and open to legal challenge. The official rationale given for the legislation was transparency: the demarcation of specific constituencies for reservation should be through an independent, consultative process of boundary drawing, to prevent the ruling party from gerrymandering or selectively reserving seats held by political rivals.

But a critical reading of this legislative aim reveals a double goal. While the procedural defence has legal merit delimitation does promote empirical justice in constituency allocation the linkage functions as a political instrument of deferred liability. There was no constitutional compulsion, scholars and critics remark, to bind a vertical/horizontal reservation to a large, countrywide halt on redistricting. The first versions of the bill, for instance, the one passed by the Rajya Sabha in 2010, had an immediate reservation of seats by a random draw of lots. By mandating the necessary census delimitation the Parliament, in effect, engineered a “future deal” whereby the existing male-dominated political establishment could pass landmark equity legislation while completely insulating their own near-term electoral interests from the

disruptive fallout of the policy.

Article 334A is a masterpiece in legislative conditionality, if you like. It raises gender parity to the status of a constitutional imperative, while ensnaring it inside a suspended administrative timetable, creating a formal regime of deferred equality.

A LEGAL AND ADMINISTRATIVE JUSTIFICATION ANALYSIS OF THE CENSUS REQUIREMENT

The decennial census is a pillar of Indian electoral democracy, providing the factual basis for demographic representation and geographical allocation. Under Article 81 of the Constitution of India, the seats in the Lok Sabha are to be allocated to the States in proportion to their respective populations. Furthermore, Article 82 provides that the readjustment/ delimitation of territorial constituencies shall be carried out by an independent authority once each census is completed. However, as an incentive to national population stabilisation policies, the Eighty-Fourth Amendment Act, 2001, constitutionally froze the total number of seats in the Lok Sabha allocated to each State on the basis of the 1971 census, but required that the internal readjustment of territorial boundaries be undertaken on the basis of the 1991 (subsequently amended to 2001) census numbers. This constitutional freeze will be crucially in place until the publication of the figures of the first census taken after the year 2026.

The 106th Amendment represents a significant shift procedure-wise in Indian constitutionalism by making the execution of a substantive fundamental right, women's reservation, dependent on the release of a fresh census. The official legislative rationale maintains that the new census data is an administrative sine qua non to be able to undertake a subsequent delimitation exercise, which would allow for a transparent, data-driven identification of constituencies for women, and prevent political gerrymandering. But when subjected to strict legal analysis the mandatory administrative hurdle for gender parity crumbles, and the census is shown not so much as a necessity of administration but rather as a calibrated political instrument.

The redundancy of a new census is evident if you compare the present constitutional structure for the Scheduled Castes and Scheduled Tribes with the proposed women's reservation. Art 330 and 332 make the political reservations of SC/ST strictly conditional on the ratio of their number to the overall population of the State. Local demographic data is vitally crucial to determine the reserved constituencies accurately as SC and ST populations are unevenly

distributed. But, such stringent demographic reliance notwithstanding, existing SC/ST electoral reservations are based on the obsolete 2001 census data as authorised by the Delimitation Act, 2002.

Women, in contrast, constitute around half of the electorate, and are virtually evenly spread over all the territorial seats of the country. There is no spatial clustering which would require a whole new population count to allocate a flat one-third quota. The Election Commission of India has so far undertaken intricate delimitation activities without ever asking for the specific constituency-wise numerical enumeration of women. Thus, linking women's reservation to a fresh census lacks the empirical compulsions that justify the census-delimitation relationship for marginalised caste groupings. Earlier versions of the legislation, for instance, the Constitution (108th Amendment) Bill introduced in the Rajya Sabha in 2010, had suggested reservation by lottery or geographic rotation without the need for a preceding census. Thus, the sudden addition of the census requirement in the 2023 Act, acts as a tool of political convenience. It creates an implementation deficit that insulates the current political elite from immediate electoral shocks while allowing them at the same time to reap the visual capital of passing progressive equality measures.

That the 2021 decennial census has been indefinitely postponed only adds to the constitutional seriousness of this necessity. The census was first delayed because of the COVID-19 pandemic, and has now been put back to some period yet to be determined, most likely 2024-2025, or beyond. The constitutional embargo in Article 82 means that the census data of the "first census taken after the year 2026" have to be formally released before a post-census delimitation can be carried out. This realistically pushes the operationalisation of women's reservation to the 2031 census cycle, and the material realisation of this privilege to the 2034 or perhaps 2039 general elections.

This temporal gap is a serious affront to the Doctrine of Reasonable Expectation in Indian public law. When Parliament, in exercise of its constituent power, makes gender parity a constitutional requirement, it engenders a fair and reasonable expectation in the public that the State will act with alacrity to enforce this right. The State creates a statutory ambiguity regime by subordinating a protected constitutional right to an indefinitely suspended administrative count. The delayed implementation undermines the legal certainty that should accompany constitutional rights. The policy is not an immediate instrument of real democracy, but a

deferred promissory note. The census requirement, in the end, does not serve as a protective administrative device but as a structural obstacle to the quick realisation of women's political activity.

THE DELIMITATION HURDLE: ARTICLE 82 AND THE POLITICS OF REPRESENTATION

Delimitation is the process of redrawing the boundaries of Lok Sabha and State Legislative Assemblies constituencies to reflect changes in the population. The procedure is statutory and is undertaken in accordance with the constitutional provisions of Article 82. The democratic rationale for this exercise is that it will ensure the ideal of "one person, one vote, one value" by giving equal representation to equal parts of the population. The Constitution (Forty-Second Amendment) Act, 1976, however, constitutionally froze the total number of seats in Parliament allotted to each State on the basis of the 1971 census to promote national population stabilisation efforts. Later, the Constitution (Eighty-Fourth Amendment) Act, 2001 extended this constitutional embargo, and made it mandatory that the total number of seats shall not be changed till the publication of the appropriate numbers for the first census taken after the year 2026.

The coming removal of this freeze in the post-2026 era has created a sharp geopolitical fault line in Indian federalism, mainly along the North-South population divide. In the southern states like Kerala, Tamil Nadu, Karnataka and Andhra Pradesh, excellent family planning programs have been adopted in the last few decades leading to appreciable population stabilisation and lower Total Fertility Rates (TFR). Conversely, the northern states in the Hindi heartland, including Uttar Pradesh, Bihar, Madhya Pradesh and Rajasthan have had steady demographic development. The current forecasts based on election trends indicate that if delimitation is done only on the basis of population after 2026, then there would be a huge shift in political power the northern states may gain as many as 43 Lok Sabha seats while southern states may lose around 24 seats.

This potential reapportionment causes deep constitutional unease within the southern states, who claim they are subject to a "democratic paradox", whereby they are politically punished with lower parliamentary representation for successfully applying the national demographic policy. Indeed, Article 334A, by formally inserting the operationalisation of the 106th Amendment into this volatile federal tangle, effectively holds women's political reservation

hostage to India's larger electoral geopolitics. The relationship connects a universal right to gender parity irrevocably to a very contentious reallocation of government power. This unexpected rise in women's seats will thus get entangled with the political realignment of the North-South divide, and risk pulling the Nari Shakti Vandan Adhiniyam into prolonged regional disagreements and possible federal deadlocks.

Significantly, a detailed legal investigation shows that linking women's reservation to a vast pan-India delimitation process is not an absolute Constitutional necessity. The Union Government defended the requirement, claiming that an impartial, quasi-judicial Delimitation Commission is needed to identify and rotate reserved seats in a transparent manner, taking the process out of the realm of partisan gerrymandering and possible legal disputes. But the historical precedents of legislation and the current constitutional provisions point to a well-established legal possibility of operationalising the quota in the existing set of seats. In 2010, the Rajya Sabha passed the Constitution (One Hundred and Eighth Amendment) Bill, which proposed to reserve one-third of the existing Lok Sabha seats for women through a simple mechanism of rotation or a random lottery, completely independent of a national reapportionment of seats.

Besides, the Election Commission of India has, in the past, managed the reservations for Scheduled Castes and Scheduled Tribes in the existing 543 constituencies without the need for restructuring the size of the Lok Sabha. Women make up about half of the population and are evenly spread across all territorial constituencies. Hence, the precise demographic and geographic concentration required for caste-based reservations is not applicable. Alternatively, jurists and academicians have suggested approaches that circumvent the delimitation hurdle altogether. Proposals like the creation of dual-member constituencies, where a particular constituency would elect both a general and a reserved women's candidate, or the imposition of intra-party quotas by amending the Representation of the People Act, 1951, would have allowed for immediate implementation without disturbing the present federal balance.

Thus, the constitutional architecture of the 106th amendment creates an artificial dependence. Yet the legal friction of fusing the enforcement of gender justice with the volatile geopolitics of the North-South divide indicates that the delimitation prerequisite is not so much an administrative necessity as a calibrated technique of legislative delay. The modern political elite has managed to achieve the immediate optic capital of adopting progressive equity

legislation by framing the Act as a "future deal" and deferring the disruptive repercussions of constituency rotation and female inclusion to future governments. Ultimately, Article 334A prioritises political expediency over substantive equality, leaving the revolutionary promise of women's reservation in a state of limbo until the intricate arithmetic of India's federal representation is conclusively decided.

DEFERRED EQUALITY AND JUDICIAL SCALABILITY

The constitutional legality of the mechanism of implementation incorporated in the 106th Amendment depends on a deep jurisprudential question: can a constitutional amendment properly create a system of 'deferred equality' without transgressing the basic principles of the Indian Constitution? The legislative architecture engenders a paradox that calls for rigorous judicial review under the Basic Structure doctrine by structurally subordinating a guaranteed substantive right of women's political representation to the indefinite, procedural contingencies of demographic enumeration and territorial reapportionment.

DEFERRED EQUALITY AND THE DOCTRINE OF BASIC STRUCTURE

The Basic Structure concept which emerged from the landmark judgement in *Kesavananda Bharati v. State of Kerala*, states that while Parliament possesses plenary constituent authority, it cannot use such power to abolish, dilute or destroy the basic elements of the Constitution. Jurisprudence has held that Democracy and Equality are the inviolable pillars of this basic system. In *M. Nagaraj v. Union of India* the Supreme Court demarcated the bounds of the equality code, differentiating formal equality (equality in law) from proportional or egalitarian equality (equality in actuality) and firmly placing the latter within the Basic Structure.

Further, in *Minerva Mills Ltd. v. Union of India*, the Court noted that Article 14 addresses inequities stemming from socio-economic disparities, and requires genuine and substantive equality, not mere formalistic observance. This very mandate is offended by the idea of 'deferred equality'. Suspending an administrative exercise and conditioning the operationalisation of a fundamental democratic entitlement on it creates an arbitrary classification in time by the State. The awareness of this serious historical marginalisation calls for urgent redress; to postpone such redress forever allows the existing patriarchal hegemony to persist. Such deferral in time has no rational relation with the purpose of substantive equality and is thus palpably arbitrary and violative of Article 14. Suspension of proportionate equality

also concurrently subverts the democratic nature of the polity, and poses a challenge to the Basic Structure of the Constitution.

THE JURISPRUDENCE OF FUNDAMENTAL RIGHTS AND SUSPENDED ANIMATION

It is surprising how little patience courts show for putting off constitutional commands when basic liberties are involved. The Supreme Court has repeatedly denounced governmental measures which reduce constitutional protections to "a mere adornment" or rights "without remedies [which] are as writ in water". As said in *Minerva Mills*, fundamental freedoms cannot be converted to a "parchment in a glass case" to be looked at solely as a matter of historical interest.

The express delay of the gender quota raises the relevant constitutional question that was discussed in *A.K. Roy vs Union of India*. In that case the Supreme Court dealt with the failure of the government to make a notification to bring into force the provisions of the Constitution (Forty-fourth Amendment) Act related to preventive detention under Article 22. The real question was whether the government could constitutionally exist in a state of "suspended animation" forever. A.K. majority. Roy did not go so far as to issue a writ to force notification and Justice Gupta's impassioned dissent laid down an important juristic concept that the president cannot veto or invalidate a constitutional change by holding it in suspended animation for policy reasons. In effect, the legislative conflation of gender equity with a delayed, constitutionally frozen delimitation process in the present setting amounts to a de facto suspension of a democratic entitlement. It makes the new right a "teasing illusion and a promise of unreality".

THE MANDAMUS QUESTION AND THE DOCTRINE OF SEVERABILITY

To resolve this constitutional contradiction, the scope of the judicial intervention in terms of the issuance of a writ of Mandamus to force the decoupling of the reserve from the census and delimitation needs to be examined. It is a known rule of public law that a court has no power of Mandamus to compel the legislature to pass a particular legislation, or to compel the administration to exercise its delegated legislative power to bring a statute into operation.

But the legal architecture of the 106th Amendment, represents a different paradigm. The

substantive right to reservation has been already legislated by the constituent body. The only hitch is the procedural linkage. The appropriate judicial remedy, therefore, is the application of the theory of severability. A constitutional court, exercising its power of judicial review, could determine whether the census-delimitation criterion is severable from the substantive reservation. If the Court deems the procedural condition to be obviously arbitrary and violative of the Basic Structure by endlessly blocking proportional equality, it has the power to sever and strike down the contingent element.

Once this unconstitutional fetter is removed, the substantive imperative of gender parity would enter into immediate operation. Hence, a writ of Mandamus could properly issue against the Election Commission of India, a statutory institution legally mandated to conduct free, fair and fair elections to operationalise the reservation within the current territorial seats. This intervention would not be judicial legislation, but the strict enforcement of a core constitutional requirement, cleared of its unconstitutional procedural obstacles, saving real equality from the abyss of eternal postponement.

COMPARATIVE STUDY QUOTAS IN GLOBAL CONSTITUTIONAL LAW

The constitutional architecture of the 106th amendment act heralds a paradigm of ‘deferred equality’ which is a sharp departure from worldwide normative standards and India’s own legislative traditions. Article 334A introduces a serious jurisprudential problem by making the implementation of a basic democratic right dependent on the future census and a national delimitation exercise. A comparative constitutional law evaluation of this mechanism demonstrates that the 106th Amendment stands distinct from the existing international and domestic regimes of ‘instant’ or ‘fast-track’ quota implementation.

The worldwide Paradigm: ‘Instant’ Implementation approaches In worldwide constitutional and electoral legislation, affirmative action for women is primarily defined by ‘fast-track’ implementation approaches aimed to deliver rapid political inclusion, as opposed to incremental or deferred advancement. Jurisdictions that have successfully implemented female quotas have done so by operationalising quotas inside the current electoral structures, without tying these rights to halted demographic exercises.

Latin American democracies, for example, were the pioneers of immediate-enforcement legislated gender quotas. Argentina adopted its mandatory legislative quota in 1991, smoothly,

without any preceding reapportionment of territorial constituencies. Similarly, in South Asia, the adjacent countries have enshrined female political representation as immediately enforceable rights in their constitutional structure. Nepal's Constitution also guaranteed 33% quota for women in its National Assembly which was operationalised soon. Bangladesh and Pakistan have also had reserved seats in their legislatures, introduced and implemented without waiting for decennial census revisions or elaborate boundary-drawing commissions.

Moreover, after the 1994 genocide, Rwanda enacted its 2003 Constitution that provided a 30% quota for women, resulting in a historic 61.3% of women in the lower house. These worldwide examples show that real democracy and gender parity can happen in a flash. They demonstrate that legislatures have the legal authority to allocate seats and establish quotas without holding representation hostage to administrative redistricting or demographic enumeration.

The Domestic Contrast: The 73rd and 74th Amendments The tardy architecture of the 106th Amendment seems especially strange when paired with India's own constitutional history, particularly the 73rd and 74th Amendment Acts of 1992. These momentous reforms made grassroots governance democratic by providing a rigorous one-third reservation of women in Panchayati Raj Institutions (PRIs) and Urban Local Bodies under Articles 243D and 243T.

Most importantly, the grassroots quotas were immediately operationalised. The Parliament did not make the political admission of women contingent on a new decennial census nor did it defer its implementation until a localised delimitation exercise was concluded. The seats were allotted, reserved and rotated within the existing territorial jurisdiction of wards and panchayats. This fast implementation methodology brought in more than a million women into local self-government at once, dramatically changing the gender dynamics of rural and urban administration. The smooth implementation of the 73rd and 74th Amendments finally settles the issue of a census delimitation linkage being an absolute administrative necessity in an effort to operationalise gender quotas in single-member seats.

Jurisprudential Anomaly of 106th Amendment The 106th Amendment is, thus, a unique anomaly in comparative constitutional jurisprudence for its lack of a definite date of application. Standard constitutional amendments, especially those that provide political rights, have a clear beginning date. By stark contrast, Article 334A has no defined temporal trigger. Its implementation is stayed by law in a condition of indeterminate contingency.

The precise timing of the introduction of the women's quota is an unknown factor, since the delimitation freeze per Article 82 is contingent upon the first census published after 2026 and the 2021 decennial census has been indefinitely postponed. This leaves the operationalisation of the Act to an indeterminate future - perhaps the 2029, 2034 or possibly 2039 general elections.

The statutory framework thus produces a 'future deal' in which the existing, male-dominated political system employs its constituent power to provide a right in principle, while totally avoiding the immediate electoral upheaval of its implementation. The 106th Amendment is the only one in the world which creates an explicit constitutional promise of equality that is specifically designed to be put to sleep through a chain of reliance between representation, demographic census and territory redrawing. It transforms a transforming democratic mandate to a procedural fantasy, hostageing the promise of gender equity to administrative procrastination.

CONSTITUTIONAL SINCERITY AND THE RIGHTS' TEMPORAL COMPONENT

The jurisprudential assessment of the 106th Amendment involves an in-depth discussion of the concept of 'Constitutional Sincerity' and the time-dimension of fundamental rights. For the State, using its constituent or legislative power, constitutional sincerity is acting with a genuine and demonstrable commitment to implementing the rights it professes. The Constitution of India is not a mere legal instrument but a 'social document'. The main provisions of the Constitution are directed towards the achievement of the objectives of a socio-economic revolution. Therefore, when the State enacts a structural equity provision like the political reservation for women but indefinitely postpones its execution with contingent administrative requirements, it throws up serious doubts about its moral and legal loyalty to the Constitution. A statute which does not provide for beginning of the law, converts a guaranteed constitutional entitlement to a simple statutory proclamation, turning the rule of law into a "teasing illusion and a promise of unreality". What constitutionalism requires of sincerity is that transformational rights should not be held hostage to administrative procrastination or political convenience.

This paradox forces us to consider the "right to be represented" as an immediate democratic imperative as opposed to a contingent luxury. The conceptual basis of political reservation is the compelling necessity to demolish entrenched hegemonies and to enable "sharing of State

power” by populations who have been historically denied access to the equipment of government. Representation is not a procedural formality, but a substantive indication of democratic involvement giving voice to the marginalised. The constitutional ideal is one of immediate justice and equality as a protection against arbitrary, systemic exclusion of persons.

The 106th Amendment transforms an instant right into a contingent eventuality by making the operationalisation of women’s political reservation conditional upon future demographic enumerations and territorial re-apportionments. True “proportional equality” calls for the positive steps of the State within the framework of liberal democracy to defend the disadvantaged portions in the present. To consign this proportional equality to some indefinite future timeline robs it of its restorative immediacy. It suggests that women’s dramatic underrepresentation in political authority is an administrative nuisance to be dealt with at a later point, not an ongoing constitutional violation that demands immediate rectification. As jurists have emphasised, the notions of liberty and equality have real meaning only when citizens are able to taste their fruits now, not when they are promised them in some indeterminable future.

This temporal disjunction between the passage of a right and its realisation creates a situation of 'Constitutional Limbo'. In this jurisprudential limbo the right exists nominally on the statute book but is materially unavailable to the rights-bearers. Such “Deferred Equality” is at cross purposes with the dynamic and activist magnitude of the Constitution’s equality law, which is supposed to aggressively strike at the inequities that arise out of large social and economic differentials. The State keeps the right in suspended animation, insulating the existent patriarchal political hegemony from imminent challenge, allowing the status quo to survive undisturbed under the garb of procedural conformity.

In addition, the limbo that follows offends the idea of the “transformative constitutionalism” which propagates the continual and active development of an environment where all segments of society are endowed with enough opportunity to develop politically and socially. If you freeze a constitutional guarantee in time, it becomes functionally sterile, moving from a living constitutional right to a “parchment in a glass case,” admired for its historical significance rather than its lived actuality.

The temporal dimension of rights is ultimately inseparable from their normative power. A right postponed indefinitely is a right denied in substance and principle. The failure to provide a

concrete deadline for the implementation of the 106th Amendment results in a serious disjuncture between the promise of substantive gender equality and its actual realisation. Constitutional sincerity demands that the State narrow the gap between law and life by adjusting to the perceived circumstances of the time, rather than leaving the attainment of equality to an indeterminate future. The constitutional promise of substantive equality remains unrealised in the lack of an immediate enforcement mechanism, gravely disappointing the transformative goal of the Indian Republic.

CONCLUSION

The Constitution (One Hundred and Sixth Amendment) Act, 2023, a significant conundrum in Indian constitutional jurisprudence. It claims to transform gender parity into a substantive constitutional imperative by inserting Articles 330A and 332A, yet the procedural architecture of Article 334A consciously manufactures a regime of ‘deferred equality’. By structurally subordinating the operationalisation of women’s political reservation to the contingent and unascertained timelines of a post-2026 decennial census and a subsequent nationwide delimitation exercise, the legislature has turned a guaranteed democratic entitlement into a procedural mirage. This relationship creates a strong tension between procedural conformity and substantive democracy. The paradox lies in the simultaneous recognition of a basic right and the infinite delay of the material realisation of that right. This statutory caveat is a political expediency ‘future deal’ that accrues the optic capital of enacting progressive equity legislation to the current, male-dominated political establishment, while entirely insulating the extant patriarchal hegemony from the immediate electoral disruptions of its implementation.

To save the Nari Shakti Vandan Adhiniyam from this constitutional uncertainty and secure its operationalisation before the 2029 general elections, it is vital to have a rigorous legislative roadmap detaching the reservation from the delimitation process. Parliament must first use its constituent power to alter Article 334A and clearly delete the census-delimitation requirement. The constitutional court, in performing judicial review, could also strike down the contingent clause as plainly arbitrary and violative of the equality code of the Basic Structure which calls for rapid remedial action for past marginalisation, under the law of severability.

After it is detached, the Election Commission of India has the administrative capacity to operationalise the one-third quota within the existing 543 Lok Sabha constituencies. It is possible to draw from the historical legislative experiences, such as the Constitution (One

Hundred and Eighth Amendment) Bill passed by the Rajya Sabha in 2010, and implement the allocation of reserved seats through a simple randomised draw of lots or a rotational mechanism without waiting for a massive structural reapportionment. And parliamentarians and parliamentary committees have also regularly presented workable legal solutions to the delimitation procedure that are not subject to the vagaries of geopolitics. This includes revisions to the Representation of the People Act, 1951, to demand internal party quotas mandating recognised political parties to reserve one-third of their tickets for women, or the introduction of dual-member constituencies. These options would also bring the right to representation into line with the explosive North-South federal divide over seat allocation that it is currently held captive to.

After it is detached, the Election Commission of India has the administrative capacity to operationalise the one-third quota within the existing 543 Lok Sabha constituencies. It is possible to draw from the historical legislative experiences, such as the Constitution (One Hundred and Eighth Amendment) Bill passed by the Rajya Sabha in 2010, and implement the allocation of reserved seats through a simple randomised draw of lots or a rotational mechanism without waiting for a massive structural reapportionment. And parliamentarians and parliamentary committees have also regularly presented workable legal solutions to the delimitation procedure that are not subject to the vagaries of geopolitics. This includes revisions to the Representation of the People Act, 1951, to demand internal party quotas mandating recognised political parties to reserve one-third of their tickets for women, or the introduction of dual-member constituencies. These options would also bring the right to representation into line with the explosive North-South federal divide over seat allocation that it is currently held captive to.

In the final analysis, the imposition of ‘Deferred Equality’ has a profound effect on the validity of the Indian constitutional guarantee. The core concept of ‘Constitutional Sincerity’ is that any time the State employs its sovereign power to proclaim a basic right, it generates a justified expectation that the right will be enforced promptly and effectively. The Constitution of India is a revolutionary text which is meant to strike at inequalities which have arisen out of the massive social and economic differentials. It requires the State to take deliberate actions to provide proportional equality in the present. The 106th Amendment turns a present democratic duty into a contingent privilege by holding women’s political agency in suspension.

If a right is postponed indefinitely, it is, in principle and substance, a right denied. Real democratic representation cannot be an afterthought of administration. The promise of gender parity will stay a sleep till the 106th Amendment is freed of its dilatory procedures and divorced from the extended census-delimitation linkage. Solving this constitutional conundrum is not simply an election logistical problem but an urgent jurisprudential imperative to maintain the moral and legal faithfulness of the Republic's pledge to substantive gender fairness.

References

1. 106th Constitutional Amendment Act: Nari Shakti Vandan Adhiniyam, Key Provisions, and Strategic Significance, Drishti IAS (2026).
2. Satarupa Pal, Debated Aspects of Women's Reservation in Indian Democracy, 12 (n.d.).
3. Priya Bhati, Analysis of the Constitution (106th Amendment) Act, 2023 in Light of Parity Constitutionalism, Indian L. Inst. (2024).
4. Charting the Path to Gender Equality in Indian Politics: The Women's Reservation Bill and Beyond, JURIST (2023).
5. Critical Analysis of Constitutional Reservation Policy in Strengthening the Political Participation of Women, 8 Int'l J.L. Mgmt. & Human. (2024).
6. Gender Equality and Women Empowerment: A Critical Analysis of Nari Shakti Vandan Adhiniyam (2024).
7. OBC Women Sub Quota within 106th Constitutional Amendment Act 2023 (2024).
8. The Constitution (One Hundred and Sixth Amendment) Act, 2023, § 5, No. 106, Acts of Parliament, 2023 (India).
9. Yogendra Yadav, Why India Won't See Women's Reservation in Effect Until 2039It's About Trickery, The Print (2023).
10. Women Reservation Act, 2023 – Women in Politics, Drishti IAS (2023).
11. India Const. art. 334A, cl. 1, cl. 2, cl. 3, cl. 4,
12. Women Reservation Act, 2023 – Women in Politics, Drishti IAS, Issues with Rotating Constituencies (2023).
13. India Const. art. 82.
14. Women Reservation Act, 2023 – Women in Politics, Drishti IAS, What Are the Issues Related to Delimitation? (2023).
15. India Const. art. 81, cl. 2.
16. M.P. Jain, Indian Constitutional Law (2014).
17. India Const. art. 330.

18. India Const. art. 332.
19. North-South Divide: Constitutional Challenges and Federal Implications of India's 2026 Delimitation Exercise, 8 Int'l J. Rsch. & Innovation Soc. Sci. (2024).
20. Geeta Mukherjee Committee Report, Thirty Sixth Report on the Constitution (One Hundred and Eighth Amendment) Bill (2008).
21. Shikha Mukerjee, Delimitation is also about reservation of seats for women, NWM India (n.d.).
22. Paladugula Dhanraj, North-South Divide: Constitutional Challenges and Federal Implications of India's 2026 Delimitation Exercise, 8 Int'l J. Rsch. & Innovation Soc. Sci. (2025).
23. Women Reservation Act, 2023 – Women in Politics, Drishti IAS, Issues Related to Delimitation (2023).
24. Rajeev Dhavan, Reservations for Women: The Way Forward, 20 Nat'l L. Sch. India Rev. (2008).
25. Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.
26. M. Nagaraj v. Union of India, (2006) 8 SCC 212.
27. Minerva Mills Ltd. v. Union of India, (1980) 3 SCC 625.
28. A.K. Roy v. Union of India, (1982) 1 SCC 271.
29. Union of India v. S.B. Vohra, (2004) 2 SCC 150.
30. Dr. Ashwani Kumar v. Union of India, (2020) 13 SCC 585.
31. Geeta Mukherjee Committee Report, Thirty Sixth Report on the Constitution (One Hundred and Eighth Amendment) Bill (2008).
32. Budgijjar Kumkum, Empowerment of Women Through Reservation: A Constitutional Perspective (n.d.).
33. Indra Sawhney v. Union of India, Supp. 3 S.C.C. 217.
34. Janhit Abhiyan v. Union of India, (2022) 10 S.C.C. 1.
35. State of Kerala v. N.M. Thomas, 1 S.C.R. 906.

36. Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 S.C.C. 1.
37. Women Reservation Act, 2023 – Women in Politics, Drishti IAS, The Implementation Mechanism (Article 334A) (2023).