

Push for more women, this time in the police

In a few years from now, women lawmakers will form at least 33% of all lawmakers in India. The Constitution (One Hundred and Twenty-Eighth Amendment) Bill, 2023 has been passed by both Houses of Parliament. This Bill provides for one-third of total seats in the House of the People, the Legislative Assembly of every State and the Legislative Assembly of the National Capital Territory of Delhi to be reserved for women for 15 years. Additionally, this reservation will also extend to seats reserved for Scheduled Castes (SC) and Scheduled Tribes (ST) in the Lok Sabha and State Legislative Assemblies. The representation of women Members of Parliament in the current Lok Sabha is about 14.4%, compared to 4.9% in the first Lok Sabha in 1952.

The purpose of this amendment is to increase women's participation in policymaking. However, as the amendment has caveats, experts are of the view that the earliest this amendment can be implemented is the general election of 2029, provided Census 2021, which is pending, is taken up soon and the process of delimitation is carried out without delay. Otherwise, implementation will be delayed till the general election of 2034. While there is no direct link between the number of legislators and the strength of law enforcement agencies, the number of women in these gives a fair idea about how representative these institutions are of the society they represent.

Reservation, actual availability in the police Most States have a policy to fill up 30% or 33% of the vacant posts (of direct recruitment) with women in their police forces through horizontal reservation – i.e., if the minimum reserved vacant posts are not filled up in each category of the SC, ST, Other Backward Classes and un-reserved with women on merit, women candidates are pushed up in the list to make up for the gap. The reservation for women in the State armed police forces is restricted to 10% in some States. Women are generally recruited against notified vacancies after permission is granted by the government to fill up vacancies.

The 'Data on Police Organizations', a publication by the Bureau of Police Research & Development (BPR&D) shows that while the total available strength of the State police forces increased by about 7.48% in the last five years, i.e., from about 19.26 lakh as on January 1, 2017, to about 20.70 lakh as on January 1, 2021 (against a sanctioned strength of 24.64 lakh and 26.31



R.K. Vij
is a retired Indian
Police Service Officer

States in India need to act as data show that the available women force is insufficient even in dealing with cases of law and order that are women

lakh, respectively), the representation of women in the State police force increased from 1,40,184 to 2,17,026 in the same period, which is about 7.28% and 10.47% of the total available force, respectively. Though the data for the year 2021 (as on January 1, 2022) has not been published, the Minister of State of the Ministry of Home Affairs (MHA) informed the Rajya Sabha in February 2023 that the representation of women in the police force (as of January 1, 2022) remained at 11.7% of the total State police force.

According to the details published by the BPR&D (as on January 1, 2021), a few States such as Kerala, Mizoram and Goa do not have a policy of reservation for women in the police force, but women's representation in these States varies between 6% and 11%. Bihar provides for 35% reservation for women and 3% for backward caste women, but the actual number of women in the force is about 17.4%. Chandigarh has a maximum percentage of women (about 22%) in the police force, while Jammu and Kashmir has the minimum (about 3.3%). Himachal Pradesh has not notified reservation for women, but 20% vacancies of constables are filled up by women. Though the MHA has repeatedly asked States to increase the representation of women in the police force to 33%, the actual availability remains low. Many States do not have a permanent police recruitment board and do not have a free hand to undertake recruitment at regular intervals.

Assuming that the attrition rate in the police forces is about 2.5% to 3% and the annual sanction of new posts to be about 1.5% to 2%, recruitment is done only against about 4% to 5% of the total posts. Thus, going by the past, it would take not less than 20 years to increase women's representation from 10% to 30% in the entire police force.

Crime data and need for more women police With 'criminal law' and 'criminal procedure' on the Concurrent List, the central government has made various amendments in these laws; certain reports and statements are to be mandatorily recorded by a woman police officer. Arrest and search of a woman accused must be done by a woman police officer.

According to National Crime Records Bureau data, about 10% of the total crime defined under the Indian Penal Code was committed against women and about 5.3% of total arrested persons in 2021 were women. Therefore, the available

women force is insufficient even in dealing with cases that are related to women. Women are also needed for law-and-order and day-to-day duties. The Protection of Children from Sexual Offences Act has further enlarged the scope of women recruitment in the police force.

It is undisputed that women can handle any assignment in a police institution. They have already proved their mettle in most police duties. In a democratic country, every institution needs to be truly representative of its populace to win their trust.

Efforts must be made

'Police' being a 'State' subject in the Seventh Schedule to the Constitution, the implementation of 'police reforms' remains primarily a concern of the States. The MHA began providing financial incentives from 2018-19 (by reserving 10% in the first year and 20% of total modernisation funds thereafter) to States that implement police reforms to a satisfactory level. Merging women police with the regular police was one such reform. Similarly, though the establishment of the Police Recruitment Board was another such reform, many States were not enthusiastic about implementing this, and, consequently, did not get this benefit. The 'satisfaction level' with family quarters (as on January 1, 2021) was only about 30%. The MHA also provided a special grant to encourage States to establish a 'women desk' in every police station. But there are not enough women personnel to handle them in the districts. The MHA also has a special provision in the modernisation plan to build separate toilets for women staff, and ensure crèche facilities for children in every police station which is sanctioned thus.

Efforts should be made to encourage more women to join the police force – for this, a conducive environment and basic infrastructure are a minimum necessity. A uniform Police Act for the entire country may help the Centre frame uniform standards for women police also. Every State should have a recruitment board to ensure recruitment on a regular basis. Taking a step forward, a special drive should be launched by all States and Union Territories to recruit more women and increase their representation in the police force, just as the Constitutional 128th amendment for women in legislatures would do in the near future.

Go to Settir
The views expressed are personal

Global dispute settlement, India and appellate review

The recently concluded G-20 Declaration, among its many commitments, reiterated the need to pursue reform of the World Trade Organization (WTO) to improve all its functions and conduct proactive discussions "to ensure a fully and well-functioning dispute settlement system accessible to all members by 2024".

The WTO's dispute settlement system, conceived as a two-tier panel cum appellate body structure, has been dysfunctional since 2019, because the United States has blocked the appointment of appellate body members. Hailed as the crown jewel of the WTO, the dispute settlement system, with the scope for appellate review and mechanisms to enforce rulings, has issued over 493 rulings since its establishment in 1995. To put this in context, the International Court of Justice has dealt with only around 190 cases since 1947. The appellate body has been crucial in ensuring coherence and predictability in rulings, ensuring confidence in the WTO dispute settlement process.

While the commitment expressed in the G-20 Declaration is heartening, whether it will have an appellate process or just be a one-stage panel process, given Washington's continued opposition to an appellate review process, remains to be seen. The U.S. seems inclined towards the dejudicialisation of international trade law – an approach whereby countries take back control from international courts and tribunals. However, as with adjudication in national courts, the appellate review process at the international level serves as an essential check on the interpretation and application of law and ensures consistency.

On the ISDS

While the future of the WTO's appellate process is uncertain, another area of international law witnessing the formative stages for an appellate process is international investment law through investor-state-dispute settlement (ISDS), an



Prabhash Ranjan
teaches at the Faculty of Legal Studies, South Asian University



R.V. Anuradha
is a Partner at Clarus Law Associates

Since India's quest has been to establish a rule-based global order, its support for an appellate review will ensure more state and investor confidence in international investment law

ubiquitous component of Bilateral Investment Treaties (BITs). The ISDS today is the principal means to settle international investment law disputes. Till January 1, 2023, 1,257 ISDS cases have been initiated. India has had a chequered history with ISDS, with five adverse awards: four in favour, and several pending claims.

Benefits of an appellate review

A critical structural facet of the ISDS mechanism (also present in India's BITs and a few free trade agreements) is that it operates through ad hoc or one-off arbitration tribunals without any appellate review. In international investment law, hundreds of ISDS tribunals operating under different arbitral institutions have, on several occasions, offered diverging interpretations of the same treaty provision. Likewise, these tribunals have reached opposite conclusions despite interpreting and applying the same treaty to the same facts.

The absence of an appellate review mechanism has meant that inconsistent and incoherent decisions and legal reasoning dot the landscape of international investment law. This has caused instability and improbability for states and foreign investors, making the regime chaotic.

An appellate review mechanism will allow for rectifying errors of law and harmonising diverging interpretations. It will have the power to uphold, modify, or reverse the decision of a first-tier tribunal and thus bring coherence and consistency, which, in turn, will infuse predictability and certainty into the ISDS system. An appellate mechanism will also be better than existing mechanisms such as the annulment proceedings, which only apply to arbitrations administered by the International Centre for Settlement of Investment Disputes – an institution India is not a member of. Further, such annulment proceedings can only address limited issues, such as the improper constitution of an arbitration tribunal or corruption but cannot correct errors in legal interpretation. The

appellate mechanism will also be superior to getting an ISDS award set aside on limited procedural grounds in a court at the seat of arbitration.

Discussions on creating an appellate review mechanism are ongoing at the United Nations Commission on International Trade Law or UNCITRAL's working group III, deliberating on ISDS reforms. There are several critical issues in creating an appellate review, such as what form it should take – an ad hoc appellate mechanism (a body constituted by the disputing parties on a case-by-case basis) or a standing appellate mechanism; what the standard to review the decisions of the first-tier tribunal should be; and what the time frame and the effect of the decision should be. These issues will, hopefully, be thrashed out at UNCITRAL.

India's stand

Although India has not made a formal statement on this issue, India, presumably, supports the idea of an appellate review in the ISDS because Article 29 of the Indian model BIT talks of it. Given India's concerns about inconsistency and incoherence in the ISDS system, supporting the creation of an appellate review mechanism will be in India's interest.

In any case, India will have to take a stand on this issue as part of the ongoing investment treaty negotiations with the European Union, which is championing the creation of an appellate review mechanism for investment disputes. Since India's quest has always been to establish a rule-based global order, it should support an appellate review which will usher in greater confidence for states and investors in international investment law. For those same reasons, India should also push for the restoration of the WTO appellate body towards achieving the goal of a fully and well-functioning dispute settlement system at the WTO.

The views expressed are personal