

March 1971 now would be eligible to get citizenship. So we can say that CAA violates NRC and provisions of Assam Accord under which protection were given to Assamese people from this influx of immigrants.

Though there is an exception to CAA that illegal immigrants will not be allowed to stay in the areas which come under schedule VI, but it should be noted that all the parts of Assam is not covered under schedule VI which creates possibilities for these migrants to stay in different parts of Assam not covered under Schedule VI Areas. This could again lead to disturbance in peace of Assam which is seen in 1970's and 80's due to influx of these migrants.

Looking and critically analyzing the two Acts in combination we can say that it is a deadly combination which violates Article 14 as it protects Hindus, Parsis, Sikhs, Jains, Buddhist and Christians from being deported back to their own countries and person belonging to Muslim religion and who are included in the list prepared in 2019, are doubtful voters and have spent almost whole life in India is now under scanner. It protects all the people of other religion by giving up them the citizenship right but excludes Muslims specifically and even doubts Indian Muslims who are under the list prepared by the Central Government.

2.6. Conclusion:

By looking into the above discussions and expert opinions and also analyzing the Citizenship Amendment Act, 2019 in tandem with National Register of Citizens we can say that this act not only excludes Muslims from the three selected countries (Bangladesh, Afghanistan and Pakistan) but also aims to disenfranchise Indian Muslims by not providing them hand or giving them citizenship who are considered as Doubtful voters in NRC as has been given to other minorities group. This can be considered as arbitrary, divisive and opposite to standard and ideals of Indian Constitution. This looks like a political trial to oust the Muslims from our country by denying them the citizenship. So, we can say it out-rightly denies Right to equality as enshrined under Article 14 of Constitution which is also considered as Basic structure. Therefore, Citizenship Amendment Act, 2019 should be considered as unconstitutional and invalid.

3. THE INTERNATIONAL LAW PARADIGM:

So far, we have discussed the present day situation and the constitutional legality surrounding it, now our focus will be the international laws and customs that are in stake in Assam. The focus shall remain on those provisions of International legal regime that are binding in India's case and obviously breaching them will result in attention from the international community and not for the right reasons.

India ratified the International Covenant on Civil and Political Rights (ICCPR) on April 10, 1979. The negative requirement for state parties to not subject anyone to arbitrary arrest or imprisonment is found in Article 9 of the aforementioned treaty. A person's freedom may only be taken away to the extent that it is done in line with the legal process.¹ Furthermore, the phrase "against the law" should not be used interchangeably with the term "arbitrariness." Instead, the term should be used to refer to a wide range of incorrect, unfair, and unpredictable behaviors.² Furthermore, this article's focus is not just on what is legal under domestic law because even something that is legal under domestic law may nonetheless result in a deprivation of liberty that violates international law. Five categories have been created by the UN Working Group on Arbitrary Detention.³

Further, Indian courts have always preferred giving the international conventions and treaties their due respect and one such example is relevant from the landmark case of *Khudiram Chakma v. State of Arunachal Pradesh*⁴ where the court penned down the following words regarding Article 14 of the Universal Declaration of Human Rights –

*"The right to seek refuge is a right outlined in Article 14 of the Universal Declaration of Human Rights, which must be read in the context of the entire document. It implies that while a person seeking asylum has no right to be admitted into a foreign state, a state that has given him protection is also under no obligation to later send him back to his country of origin. The Article also includes the legal precondition of regional declarations and instruments and possesses a great deal of moral authority."*⁵

Further, India has been the member of the Executive Committee of the High Commissioner's Programme (ExCom) since 1995. It was established in 1959 at the request of a UN General Assembly⁶ and by a resolution of the UN Economic and Social Council (ECOSOC).⁷ The UNHCR statute requires it to follow the policy directives of the General Assembly or ECOSOC.⁸ ExCom does not replace the authority of the General Assembly or ECOSOC but, rather, has its own quite specific executive and advisory responsibilities.⁹ Though it must be understood that this membership is not the equivalent of a de facto acceptance of the obligations of the 1951 Geneva Convention or its 1967 Protocol, and India has continued to act contrary to the standards of the 1951 Convention since its accession to membership in 1995.

3.1. Principle of Non-Refoulement :

Non-refoulement finds its place in several International Conventions and Treaties. In the 1951 Convention Relating to the Status of Refugees, article 33 states:

¹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), Article 9(1)

² Hugo van Alphen v. The Netherlands, Communication No. 305/1988, U.N. Doc. CCPR/C/39/D/305/1988

³ The Working Group on Arbitrary Detention, "Revised Fact Sheet No. 26," (February 8, 2019) OHCHR, accessed 24 July 2023, available at: <https://www.ohchr.org/Documents/Issues/Detention/FactSheet26.pdf>

⁴ (1994) Supp (1) SCC 615

⁵ Id at 55.

⁶ G.A. Res. 1166 (XII), U.N. Doc. A/RES/1166(XII) (Nov. 26, 1957).

⁷ Establishment of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees, E.S.C. Res. 672 (XXV).

⁸ 4 UNHCR Statute, art. 3.

⁹ CORINNE LEWIS, UNHCR AND INTERNATIONAL REFUGEE LAW: FROM TREATIES TO INNOVATION 51–54 (2012).

1. *No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.*
2. *The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.*¹

Article 3 of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment² states: —
*"No State Party shall expel, return ('refouler') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."*³

In addition, international human rights law has made non-refoulement an integral component of the prohibition of torture and cruel, inhuman or degrading treatment or punishment, enshrined in Article 7 of the ICCPR. The United Nations (UN) Human Rights Committee (HRC), which monitors the implementation of the ICCPR, has interpreted Article 7 – and to some extent, Article 6 on protecting the right to life – as implying that return to torture and other forms of ill-treatment is also prohibited.⁴

3.2. Principle of Non-Refoulement in Indian Context:

Indian legal system does not specifically recognize the principle of non-refoulement in its domestic law. India is also not a signatory to any convention like Refugee convention of 1951 which mentions principle of non-refoulement. So, it is said that India is not bound by the principle. But if we look the Constitution of India, and analyze its various articles we will see that some rights are granted not only to citizens but also foreigners which must be from the country having good relations with India.

India gives various rights to people which include not only citizens but also foreigners like Right to Equality under Article 14, Right against discrimination under Article 15, Right to life under Article 21, Right to religion under Article 25, etc.

Supreme Court being the "protector of rights of people", it has pronounced various judgments to enforce the liberty of the refugees and have broadened the Ambit of Article 14 and 21 of the Constitution.⁵ Even the principle of non-refoulement was recognized by the Gujarat High Court in the case of *Ktaer Abbas Habib v. Union of India & Ors.*⁶ Moreover, refugees also contain Right against arbitrary detention under Article 22.

Another aspect to follow the principle of non-refoulement is due to India being the member of UNHCR whose main objective is to follow and uphold human rights of all the people irrespective of caste, race, nationality, gender, religion including the rights of refugees. UNHCR gave special inference to all the States to uphold principle of non-refoulement as a customary principle without which a person who is a refugee and running for his life could go through physical, mental, psychological trauma which would be violation of its human rights. Even said so, India take its inference from Article 51 of the Constitution. Article 51(c) talks about "promotion of international peace and security". This directive principle tells us that it is the duty of the State to follow and strengthen international law and treaties to secure the World peace. So, it is necessary for India to follow the principle of non-refoulement due to its prominence in international jurisprudence.⁷

3.3. Critical Analysis:

As we have seen from the above discussions that Indian Constitution provides the safeguard to all the people and in this respect even judiciary have interpreted the provisions broadly. But still India does not have any domestic law which recognizes the principle of non-refoulement. Due to this, Indian Government is not bound to follow this principle and can move away as per its political environment prevailing in the country as seen recently in the case of Rohingyas where order of deportation was given by Indian Government recently knowing that still the environment in Myanmar is not good for Rohingya Muslims. This initiative of Government was also backed by Supreme Court which did not interfered in its decision.⁸

Looking through the perspective of Article 51 (c) which directs State to promote international peace and security is non-justiciable i.e., it cannot be enforced in the Court of law since it's just a directive. This shows that if India does not follow international conventions then too no person can approach court for seeking remedy.

Even the foreigners Act, 1946 do not distinguish between Refugees and foreigners and treat both of the categories in the same way. This means that both foreigner and refugees could be sent back to their home country if the overstayed without visa or illegally entered into the country without the permission of the Government. This brings the enforcement of principle of non-refoulement as per the whims and fancies of the Government to decide on the basis of political environment prevailing in the country and ignoring the basic human rights which every individual inherits of being born as human.

¹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment No.2545, 189 UNTS 150.

² A/RES/39/46, 10 Dec. 1984.

³ Id at 62.

⁴ UN Human Rights Committee (HRC), CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, available at: <https://www.refworld.org/docid/453883fb0.html> [accessed 25 July 2023]

⁵ *Louis De Raeds v. Union of India*, (1991 (3) SCC 554.

⁶ *Ktaer Abbas Habib Al Qutaifi v. Union of India & Ors.* 1999 Cri.L.J. 919.

⁷ Megha Purohit & Mayank Purohit, *An analysis of Non-Refoulement in Indian Legal Framework*, Vol. 2, *Jamia Law Journal*, 2017.

⁸ *Mohammad Sallimullah & Ors. v. Union of India*, AIR 2021 SC 1753.

It is further argued that Article 19 (1)(d) i.e. right to move freely throughout the country only belongs to citizens but Court have differentiated between the “right to safe passage” and “right to move freely within the country” which are two separate rights. The right to safe passage is linked with person’s right to be treated with dignity which comes under Article 21.¹ To deport the immigrants (either refugees or migrants from other countries who entered illegally) Government relies on the exception to non-refoulment i.e., National security principle by which Government is not bound to follow the principle. But Court in many cases found that Government has taken plea of National security without any proof or evidence which was also presently seen in case of Rohingya Refugee crisis.²

3.4. Conclusion:

“Would the setting up of an appropriate legal structure or framework not help to provide a measure of certainty in the States dealing with the problem of refugees, and provide greater protection for the refugees?”³

-Justice Bhagwati

Today the Principle of Non-Refoulment is widely recognized in International jurisprudence. Though it is widely recognized by many States but then too the entire nation gives priority to their domestic laws which made this principle as “weak customary principle”.

We have seen revolutionary changes in the way judiciary tried to protect refugees like Chakmas and Burmese earlier by way of judicial creation and hence upholding constitutional morality by recognizing non-refoulment principle. But due to lack of specific domestic legislation even judiciary recently ignored the rights of Rohingya’s and did not interfered in Government decision to deport them back where fear of persecution and violation of their basic rights still exists and took the back seat ignoring the principle.⁴

India being a welfare country, it is high time that Government recognizes this principle and draft a legislation to deal comprehensively with refugees and mention procedure for determination of their citizenship. Domestic laws should be brought in harmonious construction with international treaties to bring in World peace and uphold basic human rights.

4. Recommendations:

1. To give civil and political right to those people who are considered as D-voters (doubtful voters) which even today are not given the full rights of being a citizen of the country like right to vote, right to contest the elections, etc.
2. To give consideration to the people who have served the country and decide the cases of NRC on case by case basis.
3. To uphold the promises made in the Assam Accord and to uphold the basic human rights like giving right to asylum and right of safe passage which is part of right to dignity under Article 21 by way of relocating these refugees in different States.
4. Not to detain a person who are doubted to be a foreigner or whose case is going on in any foreign tribunal until the case is finally decided and give a fair trial to these doubtful citizens to present their cases and presume them innocent until not proven guilty as per the criminal jurisprudence.
5. Indian Government should now draft a law relating to refugees and just not try to solve the cases relating to refugees on ad-hoc basis to solve this crisis more effectively.
6. Indian Government should differentiate between a foreigner and a refugee which is not the case in present and every refugee or asylum seeker is said to be a foreigner under Foreigners Act, 1946.
7. To make the recognition of the customary principle of non-refoulment official by government to uphold and respect international convention for World peace and to uphold basic human rights which is also given under UDHR, ICCPR which India is part of and also recognized by different High Courts and SC as part and parcel of Article 21 of the Constitution.
8. Not to snatch the nationality of children born after 2004 of the parents who are doubtful citizens which run against the International Convention on Rights of Child and make people stateless.
9. To deport the refugees back to their home country only after the talks with other countries diplomatically after assuring that they will not have any danger of persecution in that country.
10. Not to discriminate between the refugees and give them citizen as per their own political advantage which would violate Article 14 as seen in case of Muslim and Hindus under Citizenship Amendment Act, 2019. Rather a single policy should be framed related to refugees and it should be applicable to each of them in the same way as others.

¹ Snehal Dhote, Right to life encompasses non-refoulment: Indian High Court advances Refugee Policy, JURIST, (July 25, 2023, 7:05 PM)

² Nandita Haskar v. State of Manipur, W.P.(Crl) No. 6 of 2021.

³ SAARC Law and UNHCR, Refugees in the SAARC Region: Building a Legal Framework, Seminar Report 23, (New Delhi, 1997).

⁴ Mohammad Sallimullah & Ors. v. Union of India, AIR 2021 SC 1753.

THE EXASPERATED DENIZENS AND A SQUANDERED GOVERNMENT: RETICENT RESERVATION POLICIES OF INDIA

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ABSTRACT

“I have a dream that my four little children will one day live in a nation where they will not be judged by the colour of their skin but by the content of their character”

– *Martin Luther King Jr.*

India being the largest democratic nation in the world continues to be a successful nation who provides such a predominant status for the basic, fundamental and inalienable rights which is enshrined under the Constitution of India. But to an extent, it is a clear fact that the nation faces a lot of criticisms over the age-old evil practices of discrimination and untouchability which is considered to be the biggest challenge that the so-called mother of democracy faces even after the 76th year of independence. If we are critically analyzing the issue, it is crystal clear that the changing governments from time to time can be considered as the sole reason for not fully eradicating such social evils from our society. Even though, a lot of reservation policies and affirmative actions are there under various provisions of the Constitution as well as in numerous other enactments, the implementation as well as the effectiveness is still doubtful where the real segregated class of people are not at all able to enjoy the fruits and benefits of such reservation policies. India has crossed all the limits of reservation policies which can be given to the citizens, because as of now, the country is implementing such affirmative action policies which can be considered as an antithesis to the principle of equality since the common unreserved category of people are being sidelined because of such protective discrimination. This chapter will discuss the methods on how to properly implement and effectively monitor the existing reservation policies in our nation and the scope for revisiting the reservation policies of India to preserve the interests of unreserved category as well.

KEYWORDS: *Affirmative Action, Unreserved Category, Protective Discrimination, Indian Democracy, Reservation Policies, Fundamental Rights, Minority Communities*

INTRODUCTION

The population is considered to be the strength and cornerstone of every nation and for a vast country like India with diverse population, it is the duty of the government to make proper equality provisions among all in order to achieve the principle of equality in the society. Thus, in order to achieve the said principle of equality, we are following the various reservation policies and the methods for its proper implementation and effective monitoring. Being a tool to bridge the gap between the rich and weaker sections of the society, the reservation policies or those affirmative actions initiated by the government plays a very prominent role in the upliftment of the whole society.

Thus, to some extent by following the principles of reservation and affirmative actions, the equality principle which is laid down as one of the concrete objective of the Constitution of India can also be achieved.¹ The government being the guardian of the citizens should need to make proper regulations and guidelines in order to achieve the welfare state principle by uplifting the downtrodden sections of the society. Through the implementation of these reservation policies, to an extent we can achieve the same by proper evaluation and monitoring of the said system of reservation policy by preventing its misuse which may curtails the basic idea of providing these forms of reservation benefits to the common needy people of the nation who are in actual need of the same. The government irrespective of whether they are at the national level or at the state level should need to take adequate and due care while implementing these reservation policies in various stages. This is because of the fact that the said reservation policies will make a very huge impact on the society as well as even to those persons who are benefited and not benefited by them. This is because of the fact, the persons who can avail the benefits of these reservation policies will utilize the same with its ultimate level while those persons who does not have access to these reservation policies will negatively get affected regarding the same. This is the reason why which a whole section of the society actually very vehemently opposes the reservation policies in India. According to those critics, only a marginalized section of the society will be get benefited from the same and at the same time, the benefit for one particular section of the society at certain times may

¹ P P Rao, *Right to Equality and The Reservation Policy*, April-December, Vol. 42, No. 2/4, Constitutional Law Special Issue, Journal of the Indian Law Institute, Indian Law Institute, pp. 193-203 (2000)

acts as a curse or make some negative impact on the other major sections of the society who are not at all getting benefits from any sort of reservation policies.¹

Even if someone is getting some sort of benefit from these reservation policies, that is, the benefactors of these reservation policies should not make any such malpractices in order to avail the same. The government must need to ensure proper policy procedures in order to effectively adopt reservation policies in a vast country like India. This is because of the fact that, in a very vast country like India where there is lot of cultural and societal diversities with a whooping diversity even on the basis of demographic population as well. All these diverse population is not in the need of same kind of reservation because all will differ from place to place, culture to culture, community to community and nation to nation. As per the philosophical aspect, nothing is mortal and constant and everything will change as time passes, that is, we cannot say that everything is static but they all are dynamic in nature. Likewise, the financial, economic, cultural or societal status of one person who belongs to a socially or economically backward section of the society, the said status will also change from time to time and place to place, that is, simply we can say that, almost all of these things are being connected by some sort of external influences which are at certain times cannot even be controlled by anyone, including the one who avails benefits from these sort of reservation policies. Another major challenge that is being faced by the government is that whether these sort of reservation policies should need to be implemented only in the government sector, that is, the one who is completely run by the government or some other institutions who gets the aid or grant from the government in order to run the same. Thus, the government should need to have an effective body or mechanism in order to check and regulate the importance of various kinds of these reservation policies and they should also need to analyze whether the implementation of the said reservation policies is actually taking place in an appropriate manner.

The government is duty bound to make appropriate changes from time to time after making prompt analysis and they should need to also brought some review analysis as well before finalizing the same which is going to be implemented in the said society or the institution in the mere future. Thus, through the proper implementation of the reservation policies in the nation, the overall social as well as the economic development of the nation can be achieved through the ways in which such policies are being implemented.

RESERVATION POLICIES: THE FUTILE CONTRIVANCE

India being an independent democratic nation who looks for the common welfare of the people, the government is very much entrusted with the duty to reduce the gap between the rich and the poor, that is, in a pure legal manner we can say that the government must need to take adequate care and due diligence in order to provide equality to all and everyone should need to be protected under the equal protection of law. This is an important concept that should need to be looked into by us in order to attain the said welfare nation concept that we have not yet achieved even after the 75th year of independence from the British rule. The basic thing that should need to be kept in mind that reservation should not be considered as a policy in order to benefit a particular community and thereby to segregate them only as the weaker and downtrodden section of the society and therefore all such welfare measures to be provided to them only. The reservation policies should need to be actually considered as the medium or channel through which the equality provisions laid down under the Constitution of India is being achieved.² This is because of the fact that the Constitution itself provides that no person should be treated unequally with that of another under any circumstance within the territory of India and if something happens contrary to the same, the said act will be considered to be an unlawful and unconstitutional act which will clearly disintegrate the morale and ethics of the society since the basic sacrosanct principle of the Constitution itself is violated over here which will negatively harm the nation as a whole as well.³

The government must thus need to take proper measures in order to implement the said reservation policies in a much more effective way since these forms of reservation will surely help the downtrodden sections of the society to come towards the frontiers of the nation. The basic idea of the Constitution itself is to promote equality to everyone and such sort of equality cannot be treated in its true sense of providing the equal opportunities to every one of the nations but those provisions must need to benefit the needy one who specifies to look after the said thing and to uplift those weaker sections of the society in order to attain the real equality provisions which are actually enshrined in the Constitution of India. The said reservation policies can be implemented if the government makes adequate care to effectively monitor the implementation of the previous reservation policies that came across the nation and the government is also duty bound to check whether the previous reservation policies has actually benefited the said downtrodden sections of the society and it has in no way misused by any of the other sections of the society who are actually not eligible to get such benefits of these forms of reservation policies.⁴ Thus, through proper implementation, regular monitoring and through rectifying the errors, the government can implement the reservation policies even if there are several cultural and societal disparities among the wide variety of demographic population which is actually concentrated in the nation as a whole.

AFFIRMATIVE ACTION: THE CONSTITUTIONAL PROVISIONS

The Constitution of India is considered to be the paramount law of the nation and the sacrosanct cardinal rule which must need to be followed from top to bottom without any form of discrimination and segregation at any level. That is the sole reason why, the provisions enshrined under the Constitution of India is actually called as the sacrosanct and cardinal rule of the

¹ Ezra Rosser, *A Historical Indians and Reservation Resources*, Environmental Law, Spring, Vol. 40, No. 2, Lewis & Clark Law School, pp. 437-550 (2010)

² P P Rao, *Right to Equality and the Reservation Policy*, Journal of the Indian Law Institute, April-December, Vol. 42, No. 2/4, Constitutional Law Special Issue, Indian Law Institute, pp. 193-203 (2000)

³ INDIA CONST. art 14., Part III

⁴ C Basavaraju, *Reservation under the Constitution of India: Issues and Perspectives*, Journal of the Indian Law Institute, April-June, Vol. 51, No. 2, Indian Law Institute, pp. 267-274 (2009)

nation which must need to be followed by everyone of the nation including the citizens as well as that of the non-citizens who are actually residing in this nation. The various facets of Right to Equality is actually visible from Article 14 to Article 18 which is enshrined under Part III of the Constitution of India. Such provisions is having paramount importance in the eyes of law because these forms of provisions are considered to be the basic way in which the government tries to protect our right from any form of misuse in one easy or the other even with or without the knowledge of the person who may also became the part of such an unconstitutional act without any prior intention, will or consent which will actually be considered as a threat to the principle of equality towards the whole citizens of the nation.¹ As we have already discussed the fact that Article 14 itself provided the support to reservation policies because it only creates that everyone should need to be treated equally and no one should be held as liable for any of the act which he has committed unintentionally against the principle of equality.

The reservation polices are thus should need to implemented with proper and due care by the government in order to avoid the misuses that may happen by implementing the same in the society. Article 14 of the Constitution specifies the need for having the right to equality where we can interpret that in order to have right to equality for all, everyone should need to be equalized and should need to stand in the same footing irrespective of the caste or community that they belong to and thus in order to uplift the weaker and downtrodden sections of the society, it is essential to have reservation policies in the contemporary Indian system. The constitutional provisions clearly specifies that no one shall be discriminated on the basis on anything such as their race, gender, caste, religion, class, community or even the place of birth because all these will amount to discrimination which is actually an evil practice that was existed during the British era and the founding fathers of our Constitution were making constant efforts in order to eradicate the same from our society.² It also clearly specifies that on the aforementioned things, no citizen shall be discriminated from using any of the publicly accessible things which is actually intended for the common public good and for the overall welfare of the society.³ Even though there are strict guidelines regarding the non-discriminatory practices in the nation, the Constitution clearly states that reservation cannot be considered as a negative discrimination but can only be considered as a way for uplifting the marginalized section of the society. So, such reservation policies are there in order to protect the will and interest of these marginalized sections and to bring the same into the frontiers of the society. These forms of reservation policies are actually playing a very crucial role in the upliftment of the society as well because only through the effective implementation of the said policy, we will be able to uplift the said weaker sections from the downtrodden level where they even will not be able to the public accessible services which is actually their right to get into the same. That is why, the reservation policies are also known as the affirmative action policies or even as positive discrimination.⁴ Thus, the Constitution clearly states that any special laws or legislations which is being made with respect to the protection and upliftment of women and children cannot be considered as discrimination but can thus be considered as the upliftment of the said weaker section by providing adequate reservation policies.⁵

The Constitution also provides protection for the economically weaker sections as well in order to raise their standard of living and uplift them using proper and adequate measures of reservation and other supporting policies. The law clearly stated that no person shall be discriminated on any of the aforementioned grounds as specified in the Article 15 of the Constitution with respect to the access of the public employment opportunities as well and the government is having the responsibility and authority to implement such reservation policies in order to uplift the said marginalized sections of the society.⁶ It is also clearly mentioned that the state is actually having the right to make special provisions with regard to the backward classes and backward sections of the society with respect to their appointment under any of the government department and public offices since through proper reservation policies only, they will be able to get adequate chance to be represented in the same.⁷ Thus, being the sacrosanct principle of the nation, the Constitutional provisions which specifies about the reservation policies should be followed thoroughly.

RESERVATION POLICIES: A METHOD FOR WELFARISM?

The reservation policies itself are considered to be the welfare policies in order to uplift the downtrodden and weaker sections of the society and through such form of upliftment, proper and adequate representation of the said society will be visible and earmarked in every sector which in turn helps to make their representation in the society in a much broader way. The government is thus bound to take proper and adequate measures in order to uplift the said weaker sections of the society. It is very evident that a nation will only became a developed one if all the citizens of the nation is getting a decent standard of living and no one is discriminated or segregated in any way with that of another person. Through the reservation policies, we are actually attaining somewhat the same stage and these reservation policies can be considered as the stepping stones in order to attain the overall social and economic development of the nation. The government from time to time is making adequate changes in the reservation policies with respect to the required changing needs and wants of the society. The government is also having the liability and responsibility for the proper implementation of the same because even a single misuse of any of the provision of reservation policies by anyone is actually antithetical to the principle of equality because such sort of activities will negatively affect another class of people, that is the unreserved general category.

Since we are providing reservation to one particular section or a class of communities, the chances for the open merit unreserved general class of people is getting lowered but we cannot say that we are actually making discrimination towards the

¹ Sheela Rai, *Social and Conceptual Background to the Policy of Reservation*, Oct. 19-25, 2002, Vol. 37, No. 42, Economic and Political Weekly <<https://www.jstor.org/stable/4412745>>

² INDIA CONST. art 15, cl.1., Part III

³ INDIA CONST. art 15, cl.2(a), cl.2(b), Part III

⁴ Dipankar Gupta, *Towards Affirmative Action*, India International Centre Quarterly, Winter 2006-Spring, Vol. 33, No. 3/4, India 60, India International Centre, pp. 150-161 (2007)

⁵ INDIA CONST. art 15, cl.3., Part III

⁶ INDIA CONST. art 16, cl.1., Part III

⁷ INDIA CONST. art 16, cl.4., Part III

general class people since these sort of reservation policies are actually intended to bring up the downtrodden sections of the society from their overall social and economically backward stage to that of the common unreserved general category people in terms of their financial as well as economic status.¹ Thus, reservation policies play a very crucial role in the upliftment of the society as it helps to uplift the downtrodden, weaker and marginalized sections of the society and to emancipate them to have a better life with adequate living standards. The government should need to thus make adequate regulations from time to time in order to make welfare measures in order to uplift the overall social and economic development.

THE INTERCEDING JUDICIARY AND JUDICIAL ACTIVISM

The Indian Judiciary is having a paramount importance from the very beginning when India became an independent republic nation. This is because of the fact that the Judiciary is considered to be one among the three organs of the government as well as one among the third pillar of the Indian democracy. The provisions relating to the judiciary, including the national level, state level and various courts under the district levels, it all clearly mentions the need to have an independent judiciary for the overall and smooth working of the nation as a whole. The judiciary is thus considered to be the watchguard or as the guardian of the Indian Constitution because they are considered to be an independent organization who is free from all forms of external influences such as political or other forms of influences which may tamper the governing system of the nation.² That is why the common people always relies upon the Indian judicial system in order to render their justice and if any of their right gets violated, the said judicial system will provide adequate remedial measures in order to protect our guaranteed rights and personal dignity as well which will ultimately increase the faith in the Indian judicial system.

The role played by the judiciary with respect to the implementation and regulation of these reservation policies in India is actually very much important because the said reservation policies are actually enacted by the government but the real interpretation is being made by the court of law from time to time. The court also plays a very crucial role if there arises any conflict with respect to the implementation of these reservation policies or how to interpret the said reservation policies where a conflict gets arise wherein confusions may arise with respect to who can avail the said reservation policies and who all can be considered as the real benefactors of the same. Thus, the role played by the court is very much important with respect to the same. From the very commencement of the Constitution in the year 1950 and from the very beginning of the establishment of the Supreme Court of India after the same, the role played by the judiciary is very much important and we cannot discard the fact that the judiciary helps to keep the reservation policies a vibrant one which helps the poor and downtrodden sections of the society to get uplifted and to move out from the poverty and inhuman conditions where they born and live till now.

The Judiciary through their own landmark judicial pronouncements directs the government from time to time in order to make adequate changes in the existing reservation policies and to adopt certain new reservation policies with revised or entirely new scheme in order to uplift the weaker, marginalized and downtrodden section of the society.³ Through these forms of directions, the government will at certain time makes and appoints several committees to look after and study on the matter what court had directed and make a suitable report on the same which must need to be submitted back to the government. The government is duty bound to go through the same and they are bound to implement certain policy measures after analyzing the said report in order to uplift the weaker and downtrodden sections of the society. Thus, all the citizens of the nation will get an adequate chance to represent them in all areas of the society irrespective of their caste or community and such policy measures will be very much helpful for the overall advancement of the society in terms of social and economic development as well. In this we, the nation can achieve the overall social and economic development by the implementation of various forms of welfare policies.

INDIAN RESERVATION SYSTEM: THE ROLE OF COMMISSIONS

India is considered to be the largest democratic nation in the world with a whooping population of more than 140 crores people. It is actually very difficult to look after all the matters of each and every citizen of the nation even if the government is bound to look after and check whether every citizen of the nation is getting adequate living standard and whether all the citizens of the nation are free from every form of discrimination irrespective of any of the provisions mentioned under Article 15 of the Constitution of India. Thus, in order to avoid and eradicate the evil practice of discrimination, it is very much important to have proper reservation policies in order to uplift such downtrodden sections of the society, that is, the educationally, economically and socially backward and marginalized classes should need to be uplifted in order to attain the principle of common welfare and development for all. Thus, from time to time from the very commencement of the Constitution, the government appoints certain commission to study and gave report on matters relating to the reservation policies that must need to be adopted in the Indian system.⁴ These forms of reservation policies will help to achieve proper and adequate living standard by every section of the society which will actually contribute to the overall economic development of the nation by providing all the welfare measure.

The said commissions were being appointed in the British era as well in order to check the real needy people who are actually in need of these reservation policies. Thus, these sort of commissions plays a very crucial role in the upliftment of the Indian society where everyone is getting an equal representation through the implementation of adequate reservation policies from time to time. The government is actually duty bound to implement the same with respect to the achievement of these

¹ S Waseem Ahmad and M Ashraf Ali, *Social Justice and the Constitution of India*, The Indian Journal of Political Science, October-December, Vol. 67, No. 4, Indian Political Science Association, pp. 767-782 (2006)

² Pran Chopra, *The Constitution and Supreme Court*, Economic and Political Weekly, July 24-30, Vol. 39, No. 30, Economic and Political Weekly, pp. 3355-3359 (2004)

³ Thomas Sowell, *Affirmative Action Around the World, Affirmative Action in the United States: An Empirical Study*, Yale University Press, <https://www.jstor.org/stable/j.ctt1npgb.9>

⁴ J Laxminarasimha Rao and J Laxminarasima Rao, *Reservation Policy and the Principle of Merit: A Study of Indian Bureaucracy*, The Indian Journal of Political Science, October-December, Vol. 53, No. 4, Indian Political Science Association, pp. 478-492 (1992)

forms of social and economic development of the society and the said commissions will help the government to identify who are the real stakeholders of these reservation policies and what are the ways in which they can be uplifted from their present weaker sectional class as well. Thus, through the proper recommendations made with the help of these sort of commissions, the government will take adequate measures in order to make new reservation policies and to make changes in the existing reservation policies in order to uplift the weaker and downtrodden sections of the society to increase their living standard as well. India is a land of diversities even during the British era itself. The rich cultural diversity in India is actually one of the biggest challenges for all the rulers and administrators who ruled India from time to time till now. The Hunter Commission is considered to be first and foremost commission in India to deal with matters relating to reservation policies.

The Hunter Commission was actually being headed by Sir William Hunter who was a British administrative official in the British India. This Hunter Commission was actually constitution by Lord Ripon who is considered to be the father of local self-governance in India. The major objective of Hunter Commission was to look after the educational standards of the people at that point of time and in what all ways more people can be educated and thereby increase their participation in the administrative sector as well as to raise their standard of living.¹ The recommendations made by the said committee was being analyzed by the then British officials and they started to make appropriate changes wherever required and implemented a new policy which supports the educational system as well for the residents of India. Through the effective analysis and observations made by Sir William Hunter at that time, he submitted a report to the British officials regarding the ways in which we can uplift the weaker sections of the society and thus therefore, the Hunter Commission is considered to be one among the initial commissions in India who was being appointed by the government in order to study and make a detailed analysis in how the reservation policies and welfare scheme will helps the entire nation to attain the overall social and economic upliftment.²

Thus, we can say that the Hunter Commission can be considered as the pioneer of all other commissions and committees appointed in India with respect to the implementation of reservation policies all over India. The main objective all those committees constituted till now is exactly the same, that is, to remove the evil practice of discrimination from the society and to uplift the weaker and downtrodden sections of the society and through the implementation of such reservation policies their social standard of living will also get increased which will ultimately results in the overall social and economic development of the nation. The Kalelkar Commission is headed by Shri Kaka Kalelkar in order to study and investigate the matters relating to the socially and economically backward classes of the people who are residing in India. The Kalelkar Commission was the first committee appointed by the government of independent India in order to study and make a detailed report through proper conducting of survey and analysis in matters with regard to the socially and economically backward classes who belongs those marginalized weaker and downtrodden sections of the society. The said committee was quite successful in identifying the matters relating to the social and educational backwardness of the people and thereafter made adequate and proper representations of the same in order to uplift the said weaker sections of the society.³ Thus, this can also be considered as a successful commission appointed by the government in order to make a detailed study on how to emancipate the socially and educationally backward class of people in India and thereby helps to attain proper living standards as well.

After the commencement of the Constitution of India, there were various amendments with respect to the reservation policies, the provisions for the emancipation of women, children, socially and educationally backward classes, the economical weaker sections who all belongs to the marginalized downtrodden sections of the society in one way or the other. The founding fathers of the Constitution actually implemented the reservation policy as only an interim measure for uplifting the said weaker sections of the society within the first ten years after India became an independent republic nation. The same was not able to be achieved till now and the process of reservation is going on and right now there is an alarming stage as to whether the said reservation policies started to act as an antithetical principle to the right to equality of all the citizens residing in the nation irrespective of whether the said person belongs to any of the reserved classes or an person under the unreserved general category. As time passes, the need for reservation also gets increased since the gaps between the haves and have-nots again become wider which will probably affect the society in a much more disastrous way rather than the very commencement of the Constitution where there was not that much disparity existed between them.

The Constituent Assembly Debates also witnessed the importance to have reservation in India even though there was high disparity among many of the leaders as whether to implement the reservation policies with such a wider impact or whether it should need to be delimited to some particular area in order to protect the minority rights of persons who are living in those particular area only.⁴ The late 1970's has witnessed so much agrarian attitudes towards the weaker and downtrodden sections of the Indian society where the people belonging to the said community was subjected to so many vulnerable activities which was actually not good for a healthy democratic society that of India. Thus, in the year 1979, a committee headed by Shri BP Mandal was being appointed by the government in order to study and make a detailed analysis report with respect to the socially and educationally backward classes of India and the ways in which they can be emancipated and uplifted from such a downtrodden section of the society with the main objective to eradicate the discrimination as well as those acts of inequalities which happens against such socially and educationally backward classes of India during that point of time.⁵

¹ James Johnston, *Education in India and the India Commission on Education*, Journal of the Statistical Society of London, June, Vol. 46, No. 2, Wiley for the Royal Statistical Society, pp. 225-282 (1883)

² Virendra Kumar, *Minorities' Right to Run Educational Institutions: "T.M.A. Pai Foundation" in Perspective*, Journal of the Indian Law Institute, April-June 2003, Vol. 45, No. 2, Indian Law Institute, pp. 200-238 <<https://www.jstor.org/stable/43953411>>

³ K H Cheluva Raju, *Backward Classes in India: Issues and Trends*, The Indian Journal of Political Science, October - December, Vol. 47, No. 4, Indian Political Science Association, pp. 473-485 (1986)

⁴ Rochana Bajpai, *Constituent Assembly Debates and Minority Rights*, Economic and Political Weekly, May 27 - June 2, Vol. 35, No. 21/22, Economic and Political Weekly, pp. 1837-1845 (2000)

⁵ Aditya Nigam, *Mandal Commission and the Left*, Economic and Political Weekly, December 1-8, Vol. 25, No. 48/49, Economic and Political Weekly, pp. 2652-2653 (1990)

The said commission submitted its report in the year 1980 to the President of India stating that the reservation policies should need to be continued and proper as well as adequate reservation policies are needed to uplift many of the backward classes of the society but such reservation should not exceed the fifty percentage of the total vacancies or reported posts while seeking an admission to any of the educational institution or while making an attempt to get appointed to any of the public offices under the government either at the national level or at the state level from time to time. The Mandal Commission was well known for its effective recommendations in order to uplift the backward sections, especially the backward and more backward classes of people who are residing in India and that is why at certain times, the said commission is even known as the commission for the backward classes who was appointed for eradicating the evil practice of discrimination and to uplift the said weaker and downtrodden sections of the society.¹ Thus, the Mandal Commission played a very important role in uplifting the said weaker sections of the society and to strengthen the root for implementing the reservation policies in India in order for the overall economic and social development of the nation as a whole. Thus, the Mandal Commission can be considered as one among the cornerstone of building the reservation policies of India in a more codified manner.

After India became an independent democratic nation, so many committees were constituted by the changing governments from time to time in order to study and analyze the real socially and educationally backward classes of the people in India. The major objective of all such commissions who were being appointed for analyzing the same was to make a detailed study on how the said reservation policies of India will help these said communities in order to get uplifted and how the affirmative action's help to increase their standard of living as well. Through the proper analysis of the same after getting the required statistical report, the government after through discussions with the subject matter experts will decide whether to make any changes in the present existing reservation policy system in India and through which all measures, the said downtrodden and weaker sections of the society can be uplifted as well. Thus, the government from time to time is duty bound to make appropriate changes in the existing laws of the reservation policies and certain amendments should need to be brought into in order to achieve the overall social and economic development of the nation. Even after the 75th year of independence, a very large section of the total population of the nation, that is, more than thirty percentage of the total population of India belongs to any of the backward classes as listed by the government due to one reason or another.² This is because of the fact that the changing government from time to time is actually not focusing on the overall welfare of the people but actually looks upon the overall welfare of the political party where they belong to and thus the downtrodden sections of the society will remain to be more and more backward classes as time passes. The government should need to take proper and adequate care in order to uplift the said backward sections of the society.

There is a need for having these types of commissions to analyze and study the present and contemporary scenario of India with respect to the importance and impact of reservation policies and the government based upon their report and recommendations should need to properly codify and analyze how they are going to implement the said reservation policies in the nation with an ultimate motive for the emancipation and upliftment of the weaker sections of the society. Thus, these forms of commissions, especially for the socially and educationally backward classes are very much important to protect the interest and welfare of all the people, including the most downtrodden sections of the society of the nation as well.

AFFIRMATIVE ACTION IN INDIA: THE JUDICIAL STANCE

The reservation policies exist in India from the very commencement of the Constitution and the founding fathers of the Constitution expressly mentions that for a nation like India, there is a high need to have these types of reservation policies in order to uplift the various downtrodden sections of the society. The judiciary being the guardian of the Constitution can also be considered to be the guardian of our fundamental rights because if any of our right gets violated, we can approach the court of law in order to render proper and adequate justice for us.³

Thus, being the right to have reservation as a fundamental right for those categories of people who are eligible to claim the same is having a fundamental right to acquire those reservation policies and the benefits of such reservation policies. Here, the judiciary plays a very important role as a protector and promoter of the same rather than as a mere spectator where the judicial system actively makes contributions which helps in the total emancipation of the society. The Judiciary also acts as a system to reduce and prevent the misuse of these sort of reservation policies because at many times, the people will use unethical practices, like for example, caste conversion and inter-caste marriages in order to mere acquire the benefit of reservation and to secure their life by enjoying the benefits of those reservation policies which were actually intended to help the original backward sections of the society who were supposed to acquire the same by the implementation of such welfare policies from time to time.

The court through various judicial pronouncements actually make so much additions and changes with respect to the concept of reservation policies in India. From the very beginning of the commencement of the Constitution, there were problems relating to the reservation policies of India and how it should need to be regulated. The very first question as to who all can avail reservation and how much each of them will be eligible to get all became very prominent questions and right now in the contemporary scenario of India, the usage of these forms of reservation policies are increasing at a very alarming rate and many of the people are misusing the provisions of reservation, especially that of with the economically backward sections of the

¹ Durgaprasad Bhattacharya, *The Mandal Commission in a Historical and Statistical Perspective*, Proceedings of the Indian History Congress, Vol. 51, Indian History Congress, pp. 641-648 (1990)

² Munmun Roy, *Backward Classes, The Social Order and The Constitutional Arrangement: The Indian Perspective*, The Indian Journal of Political Science, July-September, Vol. 74, No. 3, Indian Political Science Association, pp. 533-538 (2013)

³ K N Chandrasekharan Pillai, *Supreme Court on Caste Conversion and Reservation*, Journal of the Indian Law Institute, October-December, Vol. 47, No. 4, Indian Law Institute, pp. 540-543 (2005)

society.¹ Thus, in all these matters, the role of the judiciary is irreplaceable and they should need to make effective guidelines in order to properly implement the reservation policies which will surely help in the overall welfare and development of the nation.

The judiciary is considered to be the guardian of the Constitution and the key player who is there to safeguard and protect the fundamental rights of the common people. Thus, the role played by the judiciary is very important in a democratic nation like India where there is heavy independence of judiciary and we consider the principle of separation of powers as a paramount principle and even as a cardinal rule of our Constitution.² If we are focusing on the aspect of reservation policies in India, the role played by the judiciary, especially that of the Supreme Court from time to time will be very much important since they play a very vibrant role in protecting the rights of the common people in matters relating to the reservation policies. It is very evident from the various judicial pronouncements from time to time that the court does not only focus on the side of the backward and weaker sections of the society who can avail the benefits of reservation, but at certain times the court also looked at the side of those unreserved general category community who does not belong to any of the reserved class category and thereby through the implementation of such and such reservation policies, the said general category people will get badly affected. The Court in order to prevent the same has taken proper and adequate measures from time to time to prevent as an unethical situation which is antithetical to the principle of equality.

The first landmark decision on the reservation policies by the Supreme Court of India came in the year 1951 which eventually led to the first constitutional amendment.³ In the said case, the Supreme Court clearly stated that the reservation based on class and caste system is unconstitutional in educational institutions and the court clearly stated that the then existing government order in the State of Madras with regard to the admission to the educational institutions for seeking higher education and the reservation policies attached with the same is unconstitutional and it is being strike down by the court in order to uphold the contentions of the founding fathers of the Constitution with regard to the matters relating to the reservation policies as well as to safeguard Constitutional provisions which promotes the equality for all without any sort of discrimination in anyway which is actually antithetical to the principle of equality.⁴

The Supreme Court was very particular about the idea of reservation policies it always stick on to the principles that the said reservation policies should not negatively affects the people who belongs to unreserved general category who is not having any sort of reservation benefits and that is the sole reason why the Supreme Court in the year 1963 stated that the reservation should not exceed fifty percentage of the total seat at any cost and the purview of Article 15(4) as well as Article 16(4) of the Constitution of India should need to be delimited to an extent, that is, the fifty percentage reservation limit even if the reservation are being provided to the required communities through those reservation policies.⁵

Even in the contemporary scenario of India also, the concept is being again and again articulated but at certain times, the reasonable limit of these fifty percentages is also exceeded in one way or the other which is actually antithetical to the principles of equality as enshrined in our Constitution as well as with regard to the previous judicial decisions which is now also not being overruled by any other judicium pronouncement. ⁶Thus, the role played by the Supreme Court of India from time to time with respect to such forms of judicial pronouncements are very much important in order to regulate and implement the reservation policies in India with its true spirit by protecting the principle of equality as well. The Supreme Court again reiterated the principle of reservation system which is very essential for the backward classes, that is, especially to the scheduled castes and scheduled tribes with respect to their appointment in union and state public services in the government departments as well as government companies in the year 1964.⁷

This was considered to be a landmark judgement with respect to the fact that how the reservation policies are actually playing a very key and crucial role in order for the development of the nation and how such reservation policies should need to be regulated with matters relating to the public employment as well.⁸ Thus, the reservation policies with respect to the appointment in public services was also being dealt by the Supreme Court in a very detailed manner. There was always a constant debate as to whether the caste can consider to be an essential factor to determine reservation in India. The Supreme Court clearly stated that caste can also be considered as a factor to determine reservation in India but the caste alone should not act as the sole factor for determining the reservation policies all over the territory of the nation.⁹ The said case of Indra Sawhney was such a landmark judicial pronouncement where it also checks the constitutional validity and the legality of Mandal Commission report as well with regard to the aspect of reservation in respect to the socially and educationally backward classes of the society.

Thereafter, there was consistent question as to whether the religion can only be considered as a sole factor for determining or allocating the reservation to the people and the Supreme Court clearly stated that the religion or caste of a person can also act as a factor for determining the reservation policies and based on the religion or caste of the person, the said

¹ K S Chalam, *Caste Reservations and Equality of Opportunity in Education*, Economic and Political Weekly, October 13, Vol. 25, No. 41, Economic and Political Weekly, pp. 2333-2339 (1990)

² Hema Banerjee, *Reservation Policy: A Controversial Affair in Island's Society*, The Indian Journal of Political Science, July-September, Vol. 70, No. 3, Indian Political Science Association, pp. 813-824 (2009)

³ State of Madras v/s Champakam Dorairajan, 1951 AIR 226, 1951 SCR 525

⁴ Satish Deshpande, *Caste and Castelessness: Towards a Biography of the 'General Category'*, Economic and Political Weekly, April 13, Vol. 48, No. 15, Economic and Political Weekly, pp. 32-39 (2013)

⁵ M R Balaji v/s State of Mysore, 1963 AIR 649

⁶ Alok Prasanna Kumar, *Revisiting the Rationale for Reservations: Claims of 'Middle Castes'*, Economic and Political Weekly, November, Vol. 51, No. 47, Economic and Political Weekly (2016)

⁷ T Devadasan v/s Union of India, 1964 AIR 179

⁸ J K Mittal, *Equality of Opportunity in Matters of Public Employment and the Indian Supreme Court*, Malaya Law Review, July, Vol. 7, No. 1, National University of Singapore – Faculty of Law, pp. 113-126 (1965)

⁹ Indra Sawhney v/s Union of India, AIR 1993 SC 477

individual can avail the benefits of reservation if the existing law of the nation as well as the institution where whom he seeks to get admission accepts the same but only with the condition that such reservation also should not exceed the reasonable limit of fifty percentage of reservation in any aspect.¹ Thus, the Supreme Court of India elaborately discusses the ambit of minority rights in India and how the same should need to be regulated in a society like India where we have so much cultural and regional diversities which itself makes so much classes and divisions as well.²

The Supreme Court through various judicial pronouncements also stated that the reservation system is even applicable to the private sector and unaided educational system as well and thus the policies of reservation should be equal with that of the governmental policies of the nation and the reservation policy should not exceed the fifty percentage of the prescribed reasonable limit at any cost even in the private sector as well as the unaided educational institutions also which will not get any aid or grant from the government in any manner.³ The court also reiterated the principle that the government must need to make a reasonable balance in the reservation policy between the reserved class people and those belonging to the unreserved general community since everyone should need to get an equal representation and the principle of equality should need to be followed in its true spirit as enshrined in our Constitution.⁴ In the contemporary Indian scenario with respect to the reservation policies, the major question arose is whether the 103rd Constitutional amendment, that is, providing reservation to the economically weaker sections of the society is a valid one or not. Many of the philosophers as well as the critical thinkers and eminent jurists is in opposition for providing reservation to these economically weaker sections of the society since all of them stated that if the reservation is being to such communities, there will be high chance of misusing the same.

The criteria for reservation then will became the economical as well as the income criteria of the person and it will not be able to provide with all the relevant materials with respect to the same in a full proof manner and thus the chances for misusing and misinterpreting the economically weaker sections will be much higher than other classes of reservation. The issue then goes to the Supreme Court as well and in the year 2022 the Supreme Court contented that the 103rd Constitutional amendment is constitutionally valid and there is constitutionally legality for the same.⁵ Thus, the Supreme Court also stated that the economically weaker sections of the society should also need to be uplifted and emancipated in order to attain the common good and social welfare and thus in order to achieve the same, we should need to get access to all the further materials that must need to be followed and to be protected. Thus, through adequate reservation policies, the nation can uplift the downtrodden and weaker sections of the society and thereby we can achieve the overall social and economic development of the nation by upholding the constitutional values of our nation.

RESERVATION POLICIES: A CONTEMPORARY NECESSITATE?

The reservation system plays a very crucial role in the upliftment and overall development of the whole society. This is because of the fact that the said reservation policies will helps to attain the overall economic and social development of the nation through the emancipation of the weaker and downtrodden sections of the society.⁶ Through such a pragmatic social change, the entire nation will get developed and the contentions with respect to the reservation policies by our founding fathers of the Constitution will also be covered and protected. Thus, the government must need to take reasonable and due care while implementing the reservation policies in India because its structure and functioning will differ from place to place and community to community. So, it is the duty of the government that the reservation system is being implemented properly and adequate regulatory measures are being taken in order to protect the same.

The stakeholders of the reservation policies are nothing but the original benefactors who are actually getting benefits out of these said reservation policies and the government must need to ensure that such reservation policies must need to take very promptly because the benefits of the reservation must need to be availed for the real benefactors who are actually in need of the same and it should not be misused by anyone under any circumstance. The main objective of providing reservation itself is to promote social and economic development as well as the emancipation of the whole lot of people who are staying over here.⁷ The only major contention that must need to be looked into with this reservation policy is that the reservation should not act as an anthesis to the right to equality and it should in anyway harm the other section of the society, that is, the unreserved general category of people who are not at all getting any sort of reservation but at certain times will lose their opportunity to avail or grab something only because of the fact that there is excessive reservation where these common general people will be kept aside.

The reservation system and the policies implemented by the government for reservation purposes are also not a full-proof thing and they cannot be put up in a strait jacket formula where these will not be affected by any misuse or misinterpretation by anyone else. Since the reservation is having a much wider ambit and it can broadly be interpreted through various ways, the chances for misusing the provisions of reservation are also very high and we cannot neglect the fact that a miniscule section of the contemporary Indian society is actually misusing the provisions relating to the reservation policies in order to meet their selfish and ulterior needs. The reservation for women in India must also need to be looked into thoroughly because at certain times, the women reservation is also being misinterpreted and misused by many members of the nation

¹ T M A Pai Foundation v/s State of Karnataka, AIR 2003 SC 355

² Virendra Kumar, *Minorities' Right to Run Educational Institutions: "T.M.A. Pai Foundation" in Perspective*, Journal of the Indian Law Institute, April-June, Vol. 45, No. 2, Indian Law Institute, pp. 200-238 (2003)

³ P A Inamdar v/s State of Maharashtra, AIR 2005 SC 3226

⁴ Jayanth Srinivasan, *P.A. Inamdar v. State of Maharashtra*, (2005) 6 S.C.C. 537, Student Bar Review, Vol. 18, No. 2, Student Advocate Committee, pp. 103-112 (2006)

⁵ Janhit Abhiyan v/s Union of India, WP (C) 55/2019

⁶ Kumar Kartikeya, *EWS Quota violates spirit of reservations*, DECCAN HERALD, <https://www.deccanherald.com/opinion/in-perspective/ews-quota-violates-spirit-of-reservations-1154158.html> (Oct. 16, 2023, 23:31 IST)

⁷ Walter Meiden, *The Negative of the Comparison of Equality*, The French Review, December 1969, Vol. 43, No. 2, American Association of Teachers of French, pp. 273-275 <<https://www.jstor.org/stable/386568>>

including the political people who are actually very well aware of the same.¹ Such sort of reservation policies should need to be for the welfare of the nation and it should not in any way affects the entire political stability as well as the federal structure of our nation.

This includes the case conversion method or inter-caste marriages with an ulterior motive to avail the benefits of reservation and to avail such benefits which are actually only being given to the needy people. The aspect of economically weaker sections category reservation is also subjected to various forms of misinterpretations and lot of people are misusing the benefits provided by the government by making forge documents by stating that they are also coming under the said economically weaker section of the society and such benefits should need to be availed by them also. Thus, through proper and adequate regulation and monitoring of the same, the government can prevent the misuse of such reservation policies to an extent as well. The quota system and reservation system are actually the facets of reservation policies which should actually needs to hand-in-hand with each other. This is because of the fact that the concept of reservation clearly specifies that such and such amount of seats will be reserved for a particular community or class with respect to the admission towards a public employment or an admission to any educational institution while in the Quota system, it clearly establishes the relationship with the reservation system by stating that such percentage of reserved seats will be given to particular sections of backward classes who are also eligible for quota reservation system as well in the reservation system of India.² Thus, the government should need to take adequate care and due diligence with respect to prevent the misuse of quota reservation as well as the reservation policy in our system. If the government can establish a good and healthy relationship with that of the reservation policies and the backward class people who belongs to this reserved category, then to an extent, the misuse of these forms of reservation policies can be restricted without causing harm to the nation as well.

CONCLUSION

India being the largest democratic-republic nation in the whole world in terms of population is also well known for its cultural and demographic diversities. Even though India is having such a huge diversity, all the citizens of the nation cannot be equated equally and all of them cannot stand in the same footing as that of with the others. This is because of the fact that the social, educational, economical as well as the financial status of the citizens of the nation differ from one to another. We cannot assume that such a large nation like India is having a uniform pattern of reservation as well as affirmative policies in order to uplift the whole lot of people who are actually residing in our nation. The best way to emancipate the people in every society is to support them in the way in which they can move out from the social stigma of the downtrodden section of the society.

The government is duty bound to make proper and prompt measures in order to check the reservation policies which is being implemented in the nation from time to time. This is because of the fact that the reservation policies which was there from the very commencement of the Constitution and what we can see as of now is having the same objective, that is, to uplift and emancipate the weaker, backward and downtrodden sections of the society.³ But the thing is that, the whole social, economic, cultural and living standard of the people as well as of the nation got a tremendous change from that of the very commencement of the Constitution.

Thus, it is very important to look after the matter and analyze the same to whether the existing reservation policies in India are being properly regulated and monitored and whether there is any misuse of the same and if found, the remedial actions should need to be taken against the misuse and misinterpretation of reservation policies and strict penal actions should need to be taken against the violators of such unethical acts. The government thus need to implement new laws and regulations in order to check the proper implementation and regulation of the reservation policies in order to eradicate and prevent the misuse of reservation policies and benefits of the same by those people who are attaining the same unlawfully and not in a legally sound manner. The judiciary should also need to be very much diligent and they must need to analyze the cases which are coming to the court and should need to provide reasonable answers with justifications for the same in order to achieve the ultimate social welfare of the nation. Through the implementation of various reservation policies, the overall social and economic development of the nation can be achieved since the downtrodden sections of the society will be uplifted through the implementation of such welfare policies and those policies will also help to bridge the gap between the rich and poor sections of the society.⁴

Thus, we can say that the government should need to work more efficiently with respect to the implementation, regulation and monitoring of these reservation policies in order to achieve the overall economic and social development of the nation and thus we will be able to eradicate the social evils of discrimination and apathy and thereby we will be able to uphold the principle of equality for all and equal access to justice for all by having a decent standard of living for each and every citizen of the nation which in turn results in the overall economic and social development of the country as a whole which is actually the basic idea behind laying down the provisions for reservation in our Constitution by the founding fathers after India became

¹ Suman Ojha, *Reservation of Women in the Indian Parliament: Lessons from Other Countries*, The Indian Journal of Political Science, April-June, Vol. 70, No. 2, Indian Political Science Association, pp. 471-479 (2009)

² Sasheej Hegde, *The Many 'Truths' of Reservation Quotas in India: Extending the Engagement*, Social Scientist, March-April, Vol. 43, No. 3/4, Social Scientist, pp. 61-104 (2015)

³ Sujit M Raman, *Caste in Stone: Consequences of India's Affirmative Action Policies*, Harvard International Review, FALL 1999, Vol. 21, No. 4, Harvard International Review, pp. 30-34 <<https://www.jstor.org/stable/43648970>>

⁴ Nrupathunga S K, *New recruitment, promotion as per new reservation policy: Karnataka CM Bommai*, DECCAN HERALD, <<https://www.deccanherald.com/state/karnataka-politics/new-recruitment-promotion-as-per-new-reservation-policy-karnataka-cm-bommai-1189693.html>> (Feb. 09, 2023, 23:31 IST)

an independent nation from the British rule as well.¹ Thus, the overall development of the nation should need to be focused in a much broader way which will help to attain the total welfare of the nation.

¹ Special Correspondent, *Parliament approves 10-year extension to SC, ST reservation; Anglo-Indian nomination dropped*, THE HINDU, <<https://www.thehindu.com/news/national/parliament-approves-10-year-extension-to-sc-st-reservation-anglo-indian-nomination-dropped/article30289758.ece>> (Dec. 12, 2019 10:38 pm IST)