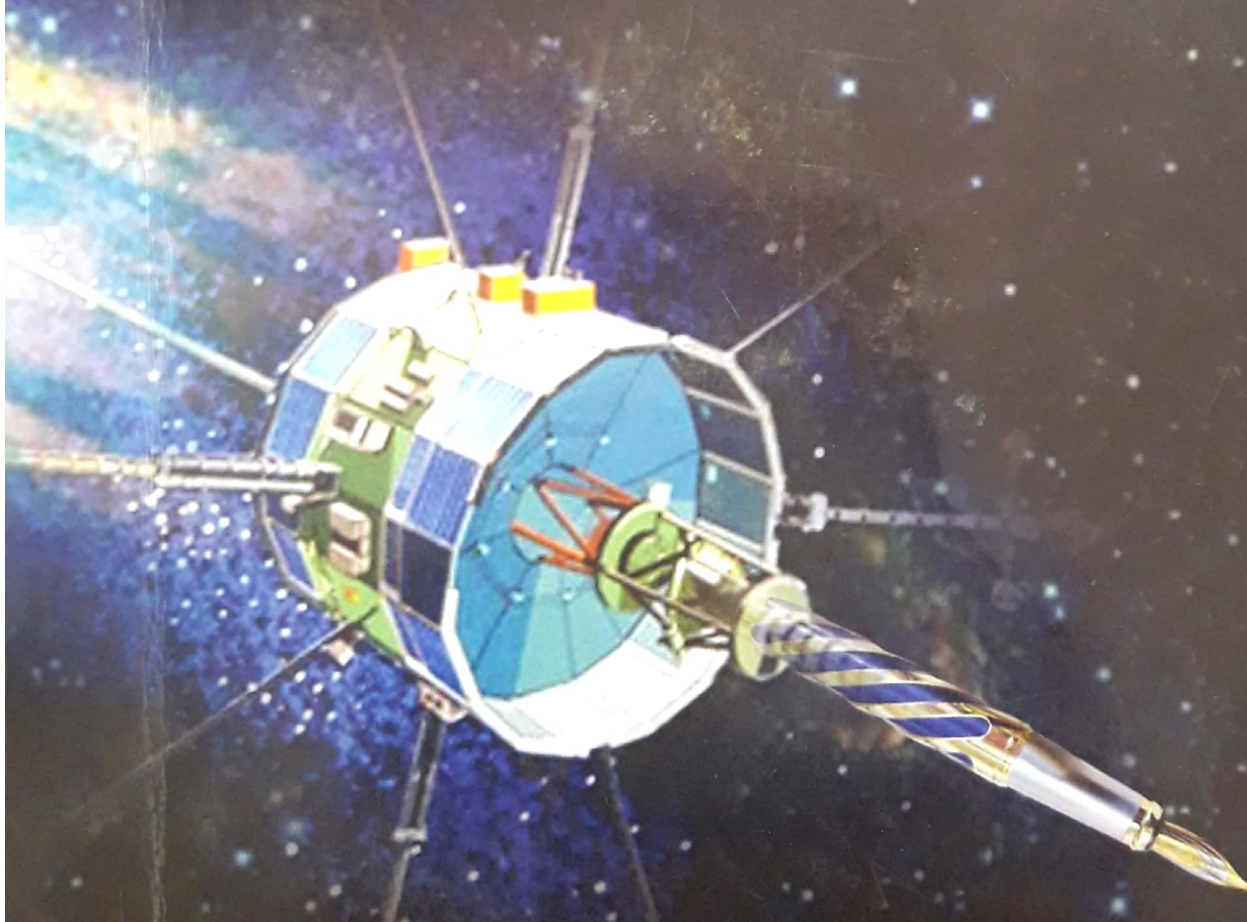


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THE ROLE OF JUDICIAL ACTIVISM IN INDIA AND IT'S IMPORTANCE TO SOCIAL AWARENESS

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Introduction: — A discussion on the Indian Judicial system regarding the area of economic and social rights has to begin with the constitution. The Indian legal system is complex, inherited from the colonial and common law model. The formal legal system is based on a written constitution, in effect since 1950. The constitution delineates the enforceable fundamental rights and then one –forceible directive principles of state policy, as well as the powers and obligations of state. A significant feature of the constitution of India is the principle of checks and balances by which every organ of state is controlled by and is accountable to the constitution and the rule of law.

The validity of the decision of the government can be challenged in the Supreme Court or the high courts and writs of mandamus are available to enforce the state's obligations. Also the law made by the legislature can be struck down by these courts if found contrary to the provision of the constitution. In addition, there are a number of states both at the federal and provincial (states) levels that touch upon various aspects of economic, social and cultural rights.

Indian judiciary, though not empowered to make legislations is free to interpret India's obligations under international law into the municipal law of the country in pronouncing its decision in a case concerning issues national laws. In this regard the Indian judiciary has played a proactive role in implementing India's internal obligations under social and political treaties, especially in the field of human rights and environmental law. This paper examines the role of Indian judiciary system and importance to society in the context of relevant constitutional provisions.

Entering into social and political treaties and agreements is one of the attributes of state sovereignty. Though the constitutional law requires a state to carry out its internal obligations, undertaken by it by ratifying social contract, but it does not govern the process of incorporating constitutional law into municipal law. In fact, the states follow judicial intervention. The conclusion is an assessment of the Indian experience in judicial enforcement and protection of economic, social and cultural rights.

***Socio-Economic Rights within the contest of the constitution:—**

The constitution of India, in its preamble, reflect the resolve to secure to all its citizens, justice, social

economic and political: liberty of thought, expression, belief, faith and worship and equality of status and of opportunity.⁽¹⁾ Among the fundamental rights guaranteed to all persons under part III of the constitution are the rights to life (Article 21) and the right to equality (Article 14) freedom of speech and expression the freedom to assemble peaceably, the freedom to form association the freedom of movement and residence and the freedom to practices any profession and to carry on any occupation, trade or business.⁽²⁾ Are also part of the chapter on fundamental rights (see Article 19). These are subject to reasonable restrictions on the grounds of sovereignty and integrity of the country security of the state public order, decency or morality.⁽³⁾ The right to equality under article 14 the right against double jeopardy and self – incrimination under article 20, the right to life under article 21 and the right to be informed of the grounds of arrest and the right to consult and be defended by a legal practitioner of one's choice under article 22 are available to all persons.⁽⁴⁾ While the freedoms enumerated under article 19 are available for enforcement only by citizens.

The remedy provided in the constitution for violation of rights and against unlawful legislative and executive acts is to approach the high courts under article 226 and the Supreme Court under article 32 of the constitution. Judicial review of executive action legislation and judicial and quasi judicial orders is recognized as part of the 'basic structure' of the constitution.⁽⁵⁾ The power of judicial review cannot be taken away even by an amendment to the constitution.⁽⁶⁾ The Supreme Court as the final word on the interpretation of the constitution. The law declared by the Supreme Court is binding and enforceable by all authorities' executive, legislative and judicial.⁽⁷⁾

***Coverage of disadvantage Groups and Non-Nationals: -** The recognition in the Indian constitution of the need for affirmative action provision for socially and educationally disadvantaged groups is significant. In India, certain classes of citizens have historically and socially suffered discriminatory treatment, including those officially known as scheduled castes (SC) and scheduled tribes (ST). Article 15(4), which prohibits discrimination on the ground of religion, race, castes, sex or place of work, nevertheless contains a provision that permits the state to make 'any special provision for the principles.⁽⁸⁾ It is pertinent to note that social

agreements are the result of the negotiations between the states and the governed by constitutional law. These are one of the most important sources of national law.

The specific wording of the different provisions of the constitution indicates whether it is enforceable only against the state or also against individuals and non-state entities. For instances, article 14 requires that 'the state shall not deny to any person equality before the law or equal protection of the law within the territory of India. Article 15 (1) also requires that the state shall not discriminate against any citizen on the grounds only of religion, race, castes, place of birth or any of them.⁽⁹⁾ On the other hands, article 15 (2) which guarantees that no citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them be subject to any disability, liability, restrictions or conditions with regard to 'access to shop, public, restaurant use of well, tanks, bathing place, roads are enforceable even against other persons, including association firms or corporations.⁽¹⁰⁾

*Judicial Activism and public Interest litigation: -

A reference has already been made to the internal emergency that was in force between 1975 and 1977 and its aftermath and this contributed significantly to the change in the judiciary's perception of its role in the working of the constitution.

On the political front the new formation that emerged at the end of the internal emergency was unstable. It was already collapsing by 1978/1979 which was when the judiciary initiated PIL, an entirely judge-led and judge-dominated movement.⁽¹¹⁾ The judges who were responsible for this innovation had earlier submitted reports, as part of expert committees, to address the issue of providing effective legal aid.⁽¹²⁾

The recommendations in these reports which envisioned PIL as a tool for delivering legal services were however not acted upon by the executive government of the day. The development of jurisprudence of economic social and cultural (ECS) rights is also inextricably linked to this significant development.

What made PIL unique was that it acknowledged that a majority of the population on account of their social economic and other disabilities were unable to access the justice system. The insurmountable walls of procedure were dismantled and suddenly the doors of obligations arising under social agreements or treaties are not, by their own force, binding in Indian domestic law. Appropriate legislative or executive action has to be taken for bringing them into force.

Judiciary has further broadened the ambit of its role. Higher judiciary has fashioned a broad strategies that have transformed it from a positivist dispute-resolution body into a catalyst for socio-economic change and protector of human rights and environment. This strategy is related to the evolution of public

interests Litigation.⁽¹³⁾ A strong ambivalence clouds the public image of the Indian judiciary. On a superficial level it reflects the shaky state of India's democracy. Both are basically in place, but both are also seriously troubled. [Galanter 1984:500] summarizes the public's perception as follows.

Court in Indian is viewed with a curious ambivalence: they are simultaneously fountains of justice and cesspools of manipulation. Litigation is widely regarded as infested with dishonesty and corruption. But courts especially High courts.... Are among the most respected and trusted institutions.

To judge by recent literature, this ambivalence has increased. On the one hand, judicial activism is seemed as a sign of hope to set short coming right. Social awareness, insistence on human rights and the attempt to check governmental lawlessness are said to have transformed the supreme court of India into a supreme court for Indians. (Baxi 1994: 143 his emphasis).

*Conclusion: - Indian constitution embodies the basic framework for the implementation of social agreements obligations undertaken by India under its domestic legal system. According to this the government of India has exclusive power to conclude and implement social treaties or agreements. The Indian citizenry has become more aware of their rights enshrined in the constitution.

People realize that it is the court that can ensure protection of their rights. Naturally they have expectations from the court. They tend to look up on the judiciary as an institution that can fulfill their aspirations. In the event of this not happening it is but natural that they many try to interrogate the functioning of the Indian Judiciary to acquire and develop skills to discharge its constitutional obligation. If the courts fail to carry out this mission our democracy would fail in achieving its vision.

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- 4) See Antonio cases, Modern constitutions and International law 1992 des cours 331 (1985-ffi) P– 331.
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- 6) The Supreme Court of India has interpreted the constitutional provisions on the executive power in Samsher Singh V. State of Punjab AIR 1974 SC 2192. Article 73 and 16