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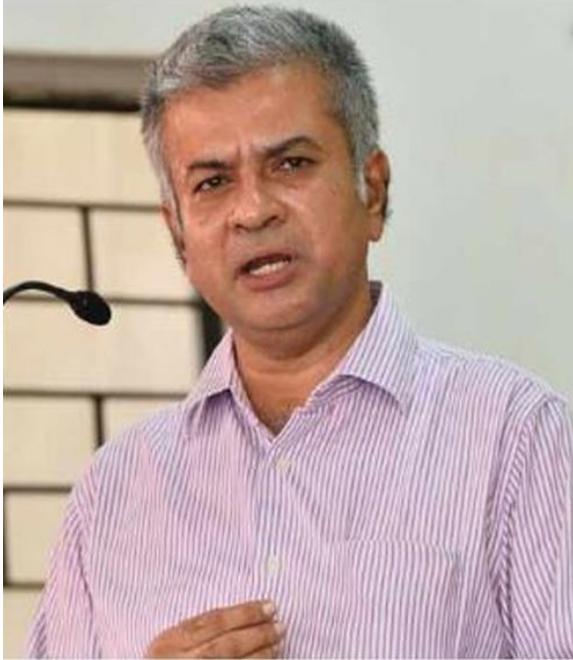
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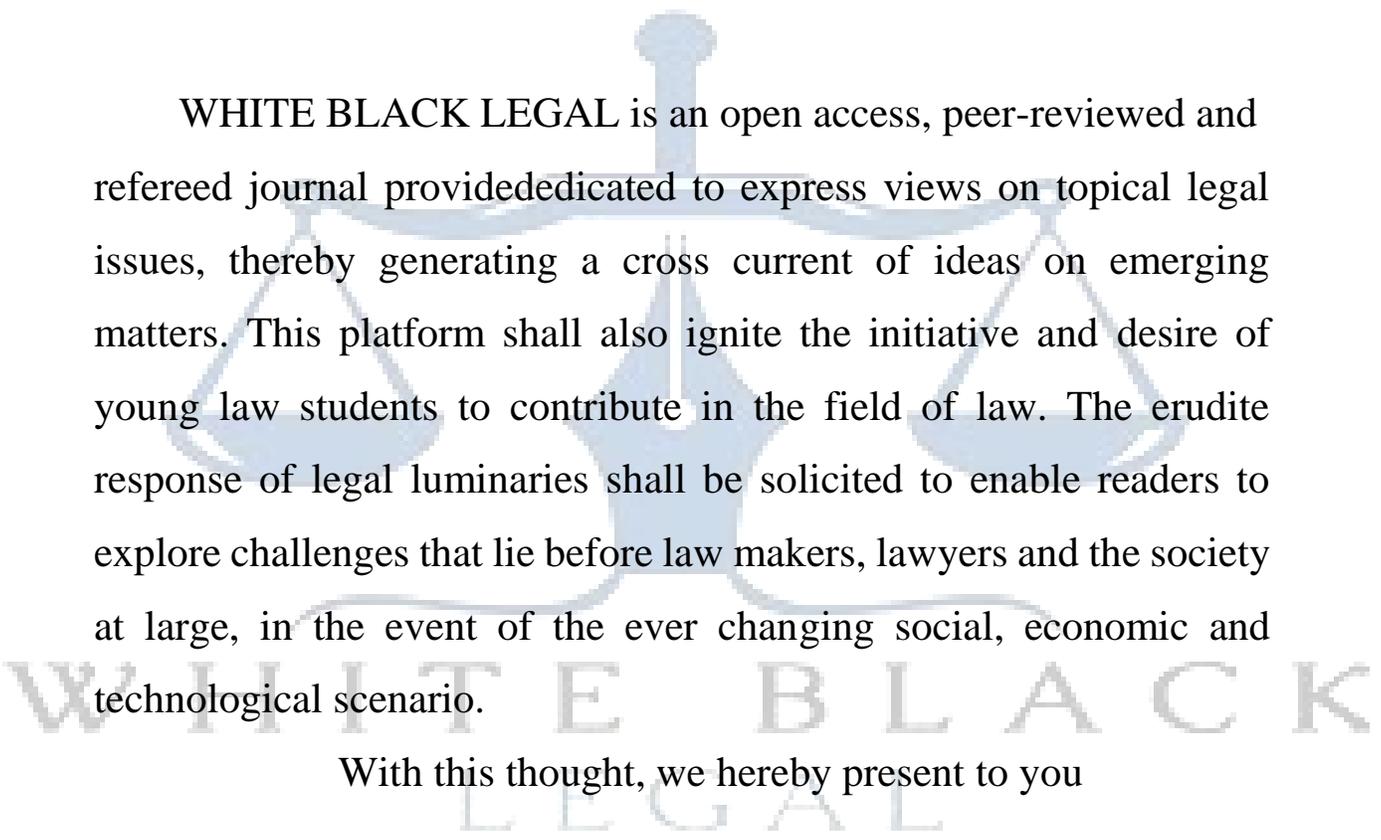
Subhrajit Chanda



BBA, LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

SOCIO AND ECONOMIC RIGHTS REALIZATION: A COMPARATIVE STUDY OF CONSTITUTIONAL BASIS AND JUDICIAL RESPONSE IN INDIAN AND SOUTH AFRICAN CONTEXT

AUTHORED BY - ANURAG YADAV,
LLM (NATIONAL LAW UNIVERSITY)

CO-AUTHOR - DR MANISHA RAWAT,
ASSISTANT PROFESSOR, NATIONAL LAW UNIVERSITY, JODHPUR.

A. INTRODUCTION

Socioeconomic rights form an important component of the broader discourse on human rights. These encompass within themselves basic rights For e.g. Right to food, Right to water, Right to housing, Right to healthcare, Right to education, Right to social security, etc. The primary objective of these rights is to ensure to the individuals a minimum standard of living, thereby promoting dignity, equality, and justice within the society. The concept of socioeconomic rights includes in itself the obligation of the state to address systemic inequalities, alleviate social status, and secure basis rights for individuals.

In the Indian legal framework, socioeconomic rights are embedded within the Directive Principles of State Policy (DPSPs) in Part IV of the Constitution for e.g. Article 38,¹ Article 39,² Article 41³ and Article 47.⁴ However these principles are non-enforceable in Courts, they act as critical guidelines for the state to advance social and economic welfare for the individuals. However, through expansive judicial interpretation, the Indian judiciary has transformed several socioeconomic rights into justiciable rights by interpreting them as falling within the ambit of

¹ “Ind. Const. Article 21 Protection of life and personal liberty - No person shall be deprived of his life or personal liberty except according to procedure established by law”

² Ind. Const. Article 39 “Certain principles of policy to be followed by the State.”

³ Ind. Const. Article 41 “Right to work, to education and to public assistance in certain cases.”

⁴ Ind. Const. Article 47 “Duty of the State to raise the level of nutrition and the standard of living and to improve public health”

Fundamental Rights, particularly the right to life enshrined in Article 21.⁵ In cases for e.g. *Francis Coralie Mullin v. U.T. of Delhi*⁶ and *PUCL v. Union of India*,⁷ shows the judiciary's proactive approach in ensuring the realisation of 'Socio economic rights' (SER).

In contrast with this, South Africa follows a mechanism where socioeconomic rights are explicitly enshrined as enforceable under the Constitution. Adopted in 1996, the South African Constitution includes socioeconomic rights within the Bill of Rights, mandating the state to progressively realize these rights based on available resources. Through landmark judgments, such as *Government of the Republic of South Africa v. Grootboom*⁸ and *Minister of Health v. Treatment Action Campaign*,⁹ the judiciary has ensured the realization of these rights, at the same time balancing the constraints of state resources with the rights of the individuals.

This paper undertakes an analysis of the constitutional frameworks and judicial approaches towards the realisation of the socio economic in India and South Africa. It examines how these jurisdictions navigate the adjudication of socioeconomic rights, drawing insights from key case law and the evolving role of the judiciary in securing these socio-economic rights.

B. CONSTITUTIONAL BASIS AND JUDICIAL INTERPRETATION ON SER IN INDIA

Socioeconomic rights uphold the virtues of justice and equality in the sense that they help in securing the basic human needs, which include food, shelter, health, education, etc. For example, in the Indian context, these rights are foundational to the welfare state envisaged in the constitution. The Directive Principles of State Policy (DPSPs) do not include justiciable rights; they, however, constitute a fundamental aspect in the governance of the country, thereby guiding the legislative and policy structures. While the socioeconomic rights under the Directive principle of state policy are not enforceable directly, they have been judicially interpreted in such a manner to form part of the right to life under Article 21,¹⁰ thereby indirectly making it enforceable in the Court of law. In

⁵ Supra note 1

⁶ 1981 SCC 1 608

⁷ WP (Civil) No. 196 of 2001

⁸ 2001 (1) SA 46 (CC)

⁹ 2002 (5) SA 721

¹⁰ Supra note 1

the Indian context, the judiciary has been proactive in realizing socioeconomic rights by narrowing the gap between constitutional provisions and the poor by adopting an expansionist reading of Article 21. For example, many judgments such as *Olga Tellis*,¹¹ *Francis Coralie Mullin*,¹² etc. were purposely interpreted to ensure the realization of the socio-economic rights for the people by making it a part of fundamental rights that are already enforceable. This part traces the legal basis of socio-economic rights in the Indian Constitution, paying attention to the way these rights have been looked at by the judiciary mostly under Article 21, and see the responses of the courts towards their realization.

CONSTITUTIONAL BASIS

The socio-economic rights framework in the Indian constitution is within the Directive Principles of State Policy (DPSPs) in Part IV of the Constitution, which outlines the state's obligations to ensure social and economic welfare. Provisions such as Article 39¹³ emphasize equitable resource distribution, Article 41¹⁴ guarantees the right to work, and Article 45¹⁵ mandates free education. Although these provisions are non-justiciable under Article 37,¹⁶ they provide the foundation for social justice in India. However, by way of expansive judicial interpretation, the Courts have read the socioeconomic rights within the purview of fundamental right under Article 21¹⁷ "Protection of life and personal liberty."

JUDICIAL INTERPRETATION

The Courts have adopted an expansionist reading of the fundamental right guaranteed under Article 21 "Right to life and personal liberty" so as to include the socioeconomic rights, which are essential for living with dignity, within its ambit. The courts have used this expansionist reading of Article 21 to include many socioeconomic rights.

In *Francis Coralie Mullin v. Union territory of Delhi*,¹⁸ the Supreme Court has held that the right

¹¹ 1986 AIR 180

¹² *Supra* note 6

¹³ *Supra* note 2

¹⁴ *Supra* note 3

¹⁵ Ind. Const. Article 45 Provision for free and compulsory education for children.

¹⁶ Ind. Const. Article 37 Application of the principles contained in this Part.

¹⁷ *Supra* note 1

¹⁸ 1981 SCC 1 608

to life under Article 21 includes in itself the right to live with dignity and not just mere animal existence. This landmark judgment becomes the foundation for the courts to read the socioeconomic rights within the ambit of Article 21. It is important to note that Justice Bhagwati has linked the dignified life with ensuring access to basic human necessities necessary to live in a dignified manner, for e.g. Right to shelter, to clothing, etc.

Similarly, The Supreme Court in the case of *Olga Tellis v. B.M.C.*¹⁹ has expanded the scope of Article 21 “Protection of life and personal liberty” and included the right to livelihood. In this case, the court was dealing with the eviction of slum dwellers by the Bombay municipal corporation, and the court held that the slum dwellers cannot be evicted without following a due procedure and giving them a reasonable opportunity of being heard, further recommending the state provide alternative housing to the slum dwellers, thereby linking the right to livelihood with the right to housing, and held that the right to livelihood is an integral part of the right to life under Article 21.

Another case in which the scope of Article 21 has been expanded is *Paschim Banga Khet Majdoor Samiti v. State of West Bengal*,²⁰ wherein the Court has held that the state is under constitutional duty to make available necessary health infrastructure for the people, thereby expanding the scope of Article 21 so as to include the right to health within the right to life.

The most important decision by the supreme court in the realisation of socio economic right is in the case of *PUCL v. Union of India*,²¹ wherein the Court held that right to life under article 21 includes in itself the right to food . Further, the Supreme Court also gives direction to the government to implement schemes like the Public Distribution System (PDS), midday meal, etc. to ensure realization of this right. Thus, the court has linked food security with the right to life under Article 21.

CASES

The Court's approach in the interpretation of the socioeconomic rights reflects its aim to bridge the gap existing between the unenforceable directive principles of state policy and the enforceable

¹⁹ 1986 AIR 180

²⁰ 1996 AIR SC 2426

²¹ WP (Civil) No. 196 of 2001

fundamental rights. The Courts, by adopting an expansive reading of Article 21, have elevated the status of socioeconomic rights from non-enforceable to enforceable, thereby facilitating their realization.

Right to Food

The Supreme Court decision in the case of PUCL v. Union of India²² is a landmark judgment that led to the realization of the socioeconomic right of right to food. The Court has given various directives, which show positive aspects of this right, to the government to introduce schemes for the realization of this right. Directing the government to effectively implement schemes like midday meals in schools, public distribution systems, etc. This judgment highlights the important role of the judiciary in mitigating food insecurity for the lowest strata of the population, thereby reiterating the intrinsic relation between the right to food and the right to dignified life under Article 21.

Right to Education

The Supreme Court has played an important role in elevating the status of the right to education to that of a justiciable fundamental right. In the case of Unnikrishnan v. State of Andhra Pradesh,²³ the Supreme Court has held that the right to education is an integral part of the right to life under Article 21.²⁴ Later, the government came up with the Right to Education Act 2009, which guarantees free and compulsory education to all the children between the age of 6 to 14 years. The court, by reading the right to education under the right to life, has indirectly acknowledged the potential of education as a tool to promote progress in society and to redress illiteracy.

Right to Healthcare

As discussed earlier, the Supreme Court in the case of Paschim banga khet mazdoor samiti v. State of West Bengal²⁵ has held that the right to healthcare is a fundamental right under Article 21, thereby imposing a duty on the state to provide primary health care services to the people. Similarly, in yet

²² WP (Civil) No. 196 of 2001

²³ 1993 AIR 2178

²⁴ Supra note 1

²⁵ AIR 1996 SC 2426

another case, *State of Punjab v. Mohinder Singh Chawla*,²⁶ it was observed that the right to healthcare, i.e., access to medical treatment, is an integral part of the right to life guaranteed under Article 21. Thus, in this way, the judiciary has established the right to healthcare as a fundamental right under Article 21, thereby making it easy to hold the state accountable for its failure to provide basic healthcare to the citizens.

Right to Housing

The Court has given significant importance to the right to housing, especially in cases involving poor, vulnerable, and marginalized populations. One such case is *Olga Tellis v. B. M.C.*,²⁷ In this case the Court has expanded scope of the right to life under article 21 to the extent that it includes in itself the right to shelter. By reiterating that the forced eviction violates the right to life guaranteed under the Constitution of India, the Court has highlighted the importance of the right to shelter and its inherent link with the right to life, which also includes a dignified life.

Balancing Judicial Activism and Separation of Powers

The proactive role of the judiciary in the realization of socioeconomic rights is praiseworthy, but concerns are that doing so it encroaches upon the legislature and executive domain. Such intervention violates the very basic tenant of separation of power between the judiciary on the one hand and the legislature and executive on the other hand. However, the same can also be justified on the ground of the failure of the state to meet its constitutional obligation further that the judiciary does not create rights rather than merely emphasizes what is already there in the existing rights. This delicate balance highlights the proactive role of the judiciary in ensuring that socioeconomic rights are not reduced to mere rhetoric.

The judiciary approach towards the realization of the socioeconomic rights in India reflects its commitment to redress the contemporary challenges by interpreting Article 21 in an expansive manner. By interpreting the socioeconomic rights within the ambit of Article 21, the Court has transformed their status from non-enforceable right to enforceable right. Landmark judgments

²⁶ AIR 1997 SC 1225

²⁷ 1986 AIR 180

such as the case of Olga Tellis, Francis Coralie Mullin,²⁸ PUCL,²⁹ etc. have highlighted the judiciary role in the realization of socioeconomic rights.

Though judicial intervention has played an important role in the realization of these rights, Nevertheless, the full and effective realization of the socio-economic right requires a collaborative effort from all three organs, viz., the legislature, executive, and judiciary. The journey toward social justice in India continues, but the judiciary's innovative and rights-focused approach provides a solid framework for addressing systemic inequalities and fulfilling the constitutional goals of justice, dignity, and equality for all citizens.

C.CONSTITUTIONAL BASIS AND JUDICIAL INTERPRETATION ON SER IN SOUTH AFRICA

The legal framework around socio-economic rights in South Africa is proof of its resolve to heal the wounds of injustice and eradication of the oppressive culture developed in apartheid South Africa. These rights are contained in the Bill of Rights in the 1996 Constitution, and for the first time in history, there is a legal recognition of the socio-economic rights as being fundamental in ensuring dignity and equality to the individuals. Many constitutions regard socio-economic rights as being of non-justiciable nature, unlike the case with these particular provisions as contained in the Constitution of South Africa because of the vision they had for themselves as codifiers of the Constitution.

The incorporation of socio-economic rights within the Constitution was motivated by South Africa's desire to reconstruct a cohesive society bearing in mind, inter alia, the equitable distribution of resources among all section of the society. This is where the need for judicial implementation of these rights has been put into action without deviating much from this constitutional vision. Landmark judicial pronouncements such as Government of the Republic of South Africa v. Grootboom³⁰ and Minister of Health v. Treatment Action Campaign (TAC),³¹ wherein the court has interpreted the extent of the socioeconomic rights by maintaining a balance

²⁸ 1986 AIR 180

²⁹ WP (Civil) No. 196 of 2001

³⁰ 2001 (1) SA 46 (CC)

³¹ 2002 (5) SA 721

between the resource constraints and the constitutional imperative.

CONSTITUTIONAL BASIS

The Constitution of South Africa is one of the most progressive Constitution in the world and therefore places socio-economic rights at the center of its transformative agenda. Chapter 2 of the Constitution, the Bill of Rights, explicitly states that socio-economic rights exist alongside civil and political rights to be secured for individuals. This method shows a desire to attain equality in every respect given the socio-economic inequalities resulting from years of apartheid rule.

EXPLICIT RECOGNITION IN THE BILL OF RIGHTS

In the Constitution, socio-economic rights are specifically outlined from Section 26 to Section 29. These include “the right to adequate housing” (section 26),³² “the right to access healthcare services, sufficient food and water, and social security” (section 27),³³ and “the right to education” (section 29).³⁴ It is critical to note that the Constitution places an obligation on the state to take reasonable legislative and other measures, within the resources available to it, to ensure the progressive realization of these rights.

When it comes to the term “progressive realization,” this recognizes the constraints the state has, especially with regards to economic resources. However, this does not absolve the state from the obligations it has but instead mandates that there should be reasonable efforts made to improve the socio-economic conditions of human beings progressively over a period of time. This goal is in consonance with international human rights law and especially the “International Covenant on Economic, Social, and Cultural Rights” (ICESCR), South Africa is a signatory to it.

PROCEDURAL RELAXATION

The Constitution brings in new approaches in order to ensure the realization of socio-economic rights for individuals. Article 38³⁵ relaxes the requirements for locus standi so that it is possible

³² South African Const. Section 26 Housing – “Everyone has the right to have access to adequate housing.”

³³ South African Const. Section 27 “Health care, food, water and social security”

³⁴ South African Const. Section 29 Education

³⁵ South African Const. Section 38 “Enforcement of rights. Anyone listed in this section has the right to approach the competent court, alleging that a right listed in this section has the right to approach a in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights”

for an individual, a group, or even a public interest organization to seek court orders on behalf of others that have been affected. Furthermore, the vertical application of the Bill of Rights also increases the positive obligations under the socio-economic rights to private individuals, thus bringing about accountability even within the non-state actors.

LANDMARK CASES

The constitution of South Africa is characterized by the judicial enforcement of socio-economic rights. Over the years, the Constitutional Court has adopted an interpretation approach that respects the separation of power while simultaneously ensuring that the socioeconomic rights are not rendered meaningless. The reasonableness form of adjudication is followed by South African courts, which attempt to assess the degree to which the states efforts to achieve socioeconomic rights are progressive, reasonable, and effective.

1. Government of the Republic of South Africa v. Grootboom³⁶

This was a case of unprecedented importance that relates to the group of homeless people who, having occupied private land, were evicted therefrom without any resettlement. The Court held that the state, by formulating a housing policy in which the needs of the most vulnerable were not taken into account, was in violation of Section 26 of the Constitution on the right to adequate housing. The judgment highlighted that the state must take proactive measures to address the issue of homelessness, especially among the poor, vulnerable population.

The Court's decision in this case sets a landmark judgement on the interpretation of the social and economic rights, advocating for the progressive realization of the same. Although the Court did not prescribe particular policy measures to be adopted, it asserted that the state has a Constitutional duty to formulate and enforce policies that are reasonable.

2. Minister of Health v. Treatment Action Campaign (TAC)³⁷

This case concerned the government's inability to provide drugs to pregnant women in order to prevent the transmission of HIV from mother to child during birth. Herein, the Constitutional Court

³⁶ Supra note 8

³⁷ 2002 (5) SA 721

noted that the government's restrictive policy has resulted in the violation of the constitutionally protected right to healthcare under Section 27. This judgment directed the government, ordering it to increase the availability of life-saving drugs while reaffirming the view that social rights are justifiable even when there are scarce resources.

It is also worth noting that the TAC decision is a pillar in the South African jurisprudence on the realisation of the socio-economic rights, where it shows the active role of courts to act when the constitutional rights of people are threatened due to complacency by the state. The case also demonstrated the ability of the judiciary to make decisions on contentious issues, ensuring a delicate balance between the resource constraints faced by the state and the need to secure the rights to the individuals.

3. Mazibuko v. City of Johannesburg³⁸

The Court discussed the right to water mentioned under Section 27. The respondents objected to the City of Johannesburg's installation of prepaid water meters, claiming that it deprived them of the right to adequate water provision. The Court held that the water policy adopted by State is reasonable and stressed the state's discretion on how to fulfill its obligations enshrined under the constitution. The Mazibuko decision reiterated a general rule that every policy must be reasonable but also highlighted the limited role of the judiciary in matters pertaining to the resources allocation.

Balancing Rights and Resources

The South African Court has relied on the models of progressive realization of the socioeconomic rights, recognizing that the same cannot be fulfilled instantaneously. In Grootboom³⁹ and TAC,⁴⁰ the Court stressed the necessity of the state's obligation to ensure the most disadvantaged people's rights are secured so that economic policies are not marginalizing but rather lead to mainstreaming and equitable treatment of the marginalized people.

Participatory and Dialogic Approach

³⁸ 2010 (4) SA 1

³⁹ 2001 (1) SA 46 (CC)

⁴⁰ 2002 (5) SA 721

One of the primary features that characterizes South African socio-economic rights jurisprudence is its participatory and dialogic nature. The courts have encouraged the executive and communities to engage with each other as well as the courts to find out ways to ensure the realisation of socio-economic rights. This is illustrated in the understanding of the issues in the Grootboom case, wherein the Court observed that policy with respect to housing cannot be made without taking into consideration the views of the people affected by such decisions.

South Africa's constitutional and judicial frameworks for socio-economic rights represent a progressive model to ensure realisation of socio-economic rights. By making socio-economic rights justiciable, the Constitution acknowledges their centrality to human dignity and equality. The judiciary's reliance on reasonableness model of adjudication has created a balance between respecting the separation of power and simultaneously ensuring that the state does not abdicate its obligation to ensure the realisation of socio-economic rights.

In landmark cases such as *Grootboom*,⁴¹ *Treatment Action Campaign*,⁴² and *Mazibuko*⁴³ shows the transformative potential of socio-economic rights litigation, highlighting the courts' role in addressing systemic inequalities and fostering accountability. However, the full realisation of socio-economic rights requires sustained political commitment, effective governance, and active participation from civil society. As South Africa continues its journey towards social justice, its socio-economic rights framework serves as a model for other similarly situated countries struggling with the challenges of inequality and poverty.

D. MODELS OF ADJUDICATION OF SOCIO ECONOMIC RIGHTS

The adjudication of socio-economic rights (SER) follows three primary models viz. The **Minimum Core model of adjudication**,⁴⁴ **Reasonableness model of adjudication**, and **Conditional model of Adjudication**.⁴⁵ These models show varying judicial interpretation approaches adopted by the judiciary for the realisation of socio-economic rights.

⁴¹ 2001 (1) SA 46 (CC)

⁴² 2002 (5) SA 721

⁴³ 2010 (4) SA 1

⁴⁴ David Bilchitz, *Poverty and Fundamental Rights: The Justification and Enforcement of Socio-economic Rights* (Oxford University Press, New York, 2007).

⁴⁵ Madhav Khosla, "Making Social Rights Conditional: Lessons from India" 8 Int'l J. Const. L. 739 (2010).

1. **Minimum Core Model**⁴⁶

As per this model, there are some socioeconomic rights that must be safeguarded by the state irrespective of the scarcity of the resources, such as the right to food, healthcare, etc. It emphasizes securing basis rights that are necessary for a dignified life. The South African case of *Government of the Republic of South Africa v. Grootboom*⁴⁷ amply illustrates this model. During the case's proceedings, the Constitutional Court though accepted the Minimum Core Approach's tenets but refused to apply them in practice, arguing about the risk of encroachment upon executive functions, thereby violating the principle of separation of power. The judgment, however, explains that the lack of such immediate provisions, especially for the vulnerable groups, was unreasonable in the context of the government's housing policy.

2. **Reasonableness form of adjudication**

This model is followed by the South African Courts in the realization of the socioeconomic rights because it assesses whether certain measures that are adopted by the state with the aim of fulfilling the constitutional obligation to respect, protect, and promote socioeconomic rights are, reasonable and inclusive. It does not specify measures that need to be undertaken but rather rests on the fact that actions of the state will be progressive, equitable in addressing the needs of the marginalized, and will meet the constitutional requirements progressively. For example, in the case of *Minister of Health v. Treatment Action Campaign (TAC)*⁴⁸ in 2002, the Constitutional Court ordered the government of South Africa to make available to HIV-positive anti-retroviral drugs to mothers. The focus of the Court on inclusion and addressing the needs of the vulnerable first provides a clear illustration of how the reasonableness review model can integrate the resource constraints and the requirements of the constitution.

3. **Conditional Social Rights Adjudication**⁴⁹

This model of the socioeconomic rights realization is largely followed in India, whereby

⁴⁶ Supra note 43

⁴⁷ 2001 (1) SA 46 (CC)

⁴⁸ 2002 (5) SA 721

⁴⁹ Supra note 44

the realization of the socioeconomic rights is linked to the policy or legislative framework. Courts do not focus on establishing new mechanisms for the realization of socioeconomic rights rather than on the effective implementation of the existing mechanisms. This approach is important in its due regard to the concerns of separation of power. For example, in the case of PUCL v. Union of India,⁵⁰ the Supreme Court has directed the government to effectively implement effectively the ‘public distribution system’ (PDS), ‘midday scheme’, etc., thereby recognizing their importance in the realization of the right to food, which is integral to the right to life under Article 21. Similarly, in the case of Olga Tellis,⁵¹ the Court has linked the right to livelihood with the right to life under Article 21 and at the same time avoided mandating new policies to be framed by the state, thus respecting separation of power by exercising judicial restraint.

E. ANALYSIS OF INDIAN AND SOUTH AFRICAN STANCE OF SOCIO-ECONOMIC RIGHTS

➤ Justiciability and Constitutional Framework

South Africa's Constitution explicitly incorporates socio-economic rights as justiciable rights; they are placed at an equal level as civil and political rights in the Bill of Rights. Sections 26⁵² and 27⁵³ require the progressive realization of rights to housing, healthcare, food and water, and social security within limits of the resource availability. This clearly reflects the transformative aspirations of the post-apartheid African Constitution in redressing the historical injustices in an all-inclusive framework of the Constitution.

On the contrary, the socio-economic rights under the Indian Constitution are not justiciable under the Directive Principles of State Policy (Part IV). Although these principles are fundamental to governance, they cannot be enforced in courts; however, through judicial interpretation, the courts in India have made many of these rights enforceable by reading them within the ambit of Article 21,⁵⁴ “the right to life and Personal Liberty” This interpretation has creatively made socio-

⁵⁰ WP (Civil) No. 196 of 2001

⁵¹ 1986 AIR 180

⁵² Supra note 32

⁵³ Supra note 33

⁵⁴ Supra note 1

economic rights enforceable, albeit in a less direct manner than in South Africa.

➤ **Judicial Interpretation and Scope of Intervention**

The South African courts, under the Reasonableness Review model, evaluate state actions for reasonable, fairness, and conformity to the constitutionally enshrined goals. This can be observed in the cases of *Grootboom*⁵⁵ and *TAC*,⁵⁶ wherein courts examine whether government policies address the needs of the marginalized and poor. Reasonableness Review ensures accountability without transgressing excessively into the domain of the executive, thus maintaining a delicate balance in judicial oversight and state autonomy as to policy decisions.

Indian courts, however, indulge in a relatively more restrained form of judicial activism, following the Conditional Social Rights Adjudication model. The judiciary avoids direct interference in the areas of resource distribution and policymaking through the enforcement of the schemes and policies already in place. For e.g., in the case *People Union for Civil Liberties*,⁵⁷ the Court has directed the government to implement effectively the existing food security initiatives rather than to bring new policies. This is in tune with the separation of power, where the legislature is held primarily concerned with the policymaking.

➤ **Balancing Rights and Resources Constraints**

South Africa's approach explicitly addresses the challenges in the realisation of socio economic rights due to resource constraints through the concept of progressive realization. Courts have acknowledge that socio-economic rights cannot be realised instantaneously rather their realisation requires a consistent efforts to achieve through long-term goals. However, judgments like *Grootboom*⁵⁸ highlighted that the argument of resource constraints cannot justify disregard for the realization of socioeconomic rights.

Indian courts, on the other hand, addresses the argument by state as to resource constraints indirectly. By focusing on effectively implementing the existing schemes, they avoid engaging

⁵⁵ 2001 (1) SA 46 (CC)

⁵⁶ 2002 (5) SA 721

⁵⁷ WP (Civil) No. 196 of 2001

⁵⁸ 2001 (1) SA 46 (CC)

directly with questions of resource constraints. This stance reflects India's socio-political context, where concerns about judicial overreach and separation of powers are raised often. While this approach ensures judicial restraint, it often limits the realisation of socio-economic rights.

➤ **Effectiveness and Transformative Potential**

The South African model of socioeconomic rights realization has led to changes in state policies, as can be observed in cases involving right as to access to housing and healthcare, etc. However, the effectiveness of these judgments in the realization of the socioeconomic rights depends on the willingness of the state. Too often, potential implementation challenges arising from bureaucratic inefficiencies thereby undermining the full effective realisation of socio economic rights. India has done well in this regard in some areas, like the effective implementation schemes for e.g. 'Mid-day meal' and the 'Right to Education' (RTE) Act etc. However the lack of explicit constitutional recognition for SER as justiciable rights limits the judiciary's ability to drive systemic reform.

This comparison highlights the strengths and limitations of both models. While South Africa's Reasonableness models provides a robust framework for balancing socio economic right enforceability with that to state autonomy in taking policy decisions, India's Conditional model of Rights Adjudication shows a cautious yet effective adaptation of judicial power within constitutional constraints. These differences highlights the necessity of contextualizing adjudication models within each nation's unique socio-political and legal landscape.

F. CONCLUSION

The adjudication of socio-economic rights reflects a critical intersection between constitutional vision and judicial intervention in addressing systemic inequalities. South Africa and India exemplify distinct approaches to SER adjudication, shaped by their unique legal frameworks and socio-political contexts. South Africa's Constitution explicitly enshrines socio-economic rights as justiciable, mandating progressive realisation through a reasonableness review. Landmark cases such as *Grootboom*⁵⁹ and *Treatment Action Campaign*⁶⁰ highlight the transformative potential of

⁵⁹ 2001 (1) SA 46 (CC)

⁶⁰ 2002 (5) SA 721

this approach in holding the state accountable while maintaining a balance between rights and resource constraints faced by the state.

In contrast, India's framework relies on judicial interpretation to make socio-economic rights enforceable by interpreting them within the ambit of the right to life under Article 21. The Conditional Social Rights Adjudication model, seen in cases like *PUCL*⁶¹ and *Olga Tellis*,⁶² shows the judiciary's cautious yet effective role in enforcing existing policies without overstepping its boundary i.e. judicial overreach.

While both systems have achieved significant milestones, challenges persist in ensuring comprehensive and sustained implementation of socio-economic rights. Together, these models provide invaluable lessons for advancing social justice, demonstrating that the realisation of these rights is both a legal and moral imperative in achieving human dignity and equality.

NOTE - Any inadvertent omission in citation is unintentional. The author welcomes communication from rightful claimants for due acknowledgement.

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⁶¹ WP (Civil) No. 196 of 2001

⁶² 1986 AIR 180