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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated 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

JURISDICTION AND POWER OF THE INTERNATIONAL COURT OF JUSTICE: AN ANALYTICAL STUDY

AUTHORED BY - VISHAL KUMAR SINGH & DR. SATISH CHANDRA¹

Abstract.

The research paper briefly examines the structure, jurisdiction and the challenges faced by International Court of Justice (ICJ), in modern era of 21st century. The paper begins with exploring the historical development of the ICJ from 'Permanent Tribunal of Arbitration' to the establishment of 'Permanent Court of International Justice' under article: 14² of the 'League of Nations'.

The research paper further discusses the composition of judges in ICJ and their nomination and electoral procedure. In addition, key focus has been made to the court's jurisdiction, differentiating the types of jurisdictions i.e., Contentious and Advisory jurisdiction with further discussion on the kinds of contentious jurisdiction.

The final part of the research paper discusses the factors which effect the impartiality and efficiency of the ICJ. The role of 'General Assembly and Security Council' in dominating the authority of the court. The conclusion discusses the recommendation which could strengthen the court's authority by making compulsory jurisdiction as mandatory and ensuring complete Independence of the judiciary from both the agencies of the 'United Nations.

Keyword- Jurisdiction power and justice

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² Covenant of the League of Nations, 1919 | ICC Legal Tools | Article: 14 | <https://legal-tools.org/doc/106a5f/pdf>

INTRODUCTION.

In the modern era of globalized world every democratic or non-democratic country irrespective of the form of government they follow either Parliamentary form or Presidential form of government, the sovereign authority wants to build a civilized nation for both its citizens as well as non-citizens by protecting and enforcing their rights associated with different subject matters within the territory of the country. If we consider the example of India, Part: III of the constitution of India provide rights to equality, right to life and personal liberty, and certain protection against conviction, arrest & detention³ to all its citizens as well as to non-citizens. In addition, different rights with regard to civil wrong, personal rights violation and protection against criminal offences are also defined under different statutes. However, such definition of rights would have no meaning until or unless such rights are not enforced by courts having appropriate jurisdiction in terms of subject matter, pecuniary and territorial jurisdiction. This ultimately means jurisdiction is an essential prerequisite (*'Sine Qua Non'*) before deciding any dispute and any inaccuracy in determining jurisdiction in a civil suit may result in dismissal or rejection of suit⁴ and under criminal trial, jurisdictional error may render the decision null & void if there is failure of justice. However, a respondent may intentionally raise a jurisdictional objection for the purpose of delaying legal proceedings, even when the court have appropriate jurisdiction.

In the aforesaid paragraph we have discussed about building a strong civilized nation by enforcing the rights of individual by appropriate judicial authority. However, how would the right of countries at international level be secured and protected? How would countries resolve their dispute arising between them on any particular right? Which authority would have the appropriate jurisdiction to decide the same?

Earlier, in the past it has been observed that before the establishment of any judicial body at international level, disputes between nations were resolved by using force i.e., external aggression through wars because of which huge loss to human lives, country's economy, environment depletion, and other miscellaneous damages were caused. Following the practices of resolving disputes as discussed hereinbefore, Czar Nicholas II of Russia⁵ and diplomats of

³ The Constitution of India | Part: III | Fundamental Rights | Article: 14, 20, 21 & 22, as amended by The constitution (Forty-fourth Amendment) Act, 1978, article 22 shall stand amended as directed in section 3 of that Act.

⁴ The Code of Civil Procedure | Act No. 5 of 1908 | The First Schedule | Order: VII, Rule: 10 & 11

⁵ First Hague Peace Conference | EBSCO- Research Database, E-Books, Discovery Service | Published: 2023 | By Greising, Jack H.; Imholte; John Quinn | <https://www.ebsco.com/research-starters/history/first-hague-peace-conference>

twenty-six other nations holding major powers took collective step to organize peace building conferences in the year 1899⁶ & 1907⁷ at '*The Hague, Netherlands*'. The conference resulted in the establishment of '*Permanent tribunal of arbitration*'⁸ for the purpose of facilitating dispute resolution through alternative dispute mechanism i.e., arbitration and mediation. But, because of the inefficiency of the institution to function in the nature of court of having permanent judges, permanent registry for communication with government, no public proceeding, accessibility and jurisdiction for all states, etc the tribunal was succeeded by '*Permanent Court of International Justice*' in the year 1920 after World War: I by article: 14 of the League of Nations⁹. However, with the dissolution of League of Nations because of the inefficiency to achieve the purpose of preventing future wars i.e., World War: II, '*International Court of Justice*' (ICJ) was established as "principle Judicial organ" under article: 92 of the United Nation Charter¹⁰ for adjudicating disputes between nations and to provide advisory opinion to specific international organizations of United Nations. However, despite having long journey of establishing ICJ the purpose behind establishing the judicial organ is not achieved because of the lacuna it has under the composition and jurisdiction clause. Every time a matter is filed before the court objection based on admissibility and jurisdiction is raised by the respondent state.

The present research paper will briefly discuss the composition, jurisdiction and powers of 'International Court of Justice' and will also identify the issues and challenges that the court faced in the 21st century in dealing with the modern disputes of terrorism, human trafficking and environment. During the research a comparative analysis of jurisdiction of Indian courts and the relevant provision of statute will also be discussed.

⁶ 1899 Convention For The Pacific Settlement of International Disputes | Permanent Court of Arbitration- Basic Document | PCA-CPA |

<https://docs.pca-cpa.org/2016/01/1899-Convention-for-the-Pacific-Settlement-of-International-Disputes.pdf>

⁷ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations Concerning the Laws and Customs of War on Land. The Hague | International Committee of the Red Cross | 18th October, 1908 | <https://ihl-databases.icrc.org/assets/treaties/195-IHL-19-EN.pdf>

⁸ History | International Court of Justice | The Hague Peace Conferences and the Permanent Court of Arbitration <https://www.icj-cij.org/history#:~:text=proposals%20for%20the%20creation%20of,and%20would%20facilitate%20their%20work.>

⁹ Covenant of the League of Nations, 1919 | ICC Legal Tools | Article: 14 | <https://legal-tools.org/doc/106a5f/pdf>

¹⁰ Charter of the United Nations | Chapter XIV: The International Court of Justice | Article: 92 | Welcome to the United Nations | <https://www.un.org/en/about-us/un-charter/full-text>

❖ **RESEARCH METHODOLOGY: -**

The researcher has opted for doctrinal research of method for conducting the study on Composition, Jurisdiction and Power of the 'International Court of Justice'. The said method allows the researcher to analyze existing laws i.e., United Nation Charter, Statue of the 'International Court of Justice' and judgement pronounced by the ICJ. The aim of the research is to analyse the structure, jurisdiction, composition and the role of 'The General Assembly' and 'The Security Council' in the ICJ so that it can be ascertained whether the court is able to function in its true efficiency or not. To achieve the aim of the research, the researcher has replied on the research paper published in International Journal of Law, Studies in Law and Justice & Gloden Gate University, School of Law.

❖ **LITERATURE REVIEW: -**

The research paper titled 'An Overview of the Challenges Facing the International Court of Justice in the 21st Century' | Volume: 18 | Issue: 1 | Article: 7 | Professor Dr. S. Gozie Ogbodo (2012), available at <https://digitalcommons.law.ggu.edu/annlsurvey/vol18/iss1/7> discusses the core issue of court's legitimacy i.e., the jurisdiction and composition clause to address international dispute. In addition, the research paper also discusses the possible solution which could gear up the issues mentioned hereinbefore. The research paper is divided into five sub-heads; each will be discussed in brief with a comparative analysis with Indian judicial system wherever required.

I. 'COMPOSITION OF INTERNATIONAL COURT OF JUSTICE',

The head discusses the composition of the members present in the 'International Court of Justice', the role of 'UN Secretary General' & 'General Assembly' in the nomination and election process, the essential qualification for being a member of the ICJ, the process of removal or resignation of members, the process of re-election, certain reasonable restriction necessary for ensuring fairness and transparency and the role of president for deciding whether a full bench would sit to decide a matter or a chamber sitting with a composition of three or more judges will decide the matter in issue.

It has been specified that currently 'International Court of Justice' consist of fifteen judges, one among them would be from each of the five permanent members of the UN Security Council i.e., China, France, Russia, United Kingdom and The United States. And for remaining ten seat,

single member from each state would be nominated based on two required qualifications i.e., first the individual should possess every required qualification to become a judicial officer of the highest court in his country, meaning thereby if a candidate from India wants to become member of the ICJ he must be a citizen of India, have five years of experience as a judicial officer of any state high court or should have ten years of experience as an advocate of any state high court or should be a distinguished jurist in the opinion of the President of India.¹¹ And the second and the most important qualification is that the judges as a whole should represent 'Principal legal system of the world' so that whenever the court makes any decision the perspective of all the legal traditions are reflected in the judgement. Following this qualification will ensure that no country is neglected. Once the final list of nomination is complete based on the required qualification as discussed hereinbefore, the list is presented to the 'UN General Assembly' for approving following which the 'Security Council' would conduct the election. The member who successfully attain absolute majority holds the position of judge in ICJ.

Once the member of ICJ is elected as judicial officer he/she is prohibited from performing any administrative function for any organization and also, he is prohibited from working in any professional capacity in any organization. In addition, judges are prohibited from presiding as judicial officer in matter in which he is related to any of the parties in dispute either directly or indirectly, meaning thereby if he has represented any party as counsel in matter prior, or he has acted agent or worked in professional capacity for the party he is discouraged from deciding their matter not only when he is holding the position of judicial officer but also after he has ceased to be a judicial officer meaning thereby he has either completed his tenure of nine years or he has been removed by passing a unanimous decision by all the members of ICJ or he has taken voluntary resignation on the ground of health/ personal reasons.

Although the composition of ICJ consist of fifteen judges, the President of the court may on the request of parties in dispute allow the matter to be decided in chamber proceeding wherein three or more judges will preside over the bench. The matter is decided based on majority however if the judges are not able to reach a unanimous decision, then under those circumstances the decision of the President would be final.

¹¹ The Constitution of India | Part: V | Chapter: IV | The Union Judiciary | Article: 124(3) | Establishment and Constitution of Supreme Court

II. 'THE ISSUE OF JURISDICTION AND ADMISSIBILITY'

The head deals with objections of jurisdiction and admissibility as part of preliminary objection raised by respondent states. Also, the grounds on which objection is raised and the powers of ICJ under article: 36(6) of the ICJ statute¹² to determine whether the objection is within the scope of any of the elements or not.

Whenever any dispute arises between parties the first stage is to file a plaint before the appropriate court and only after conducting preliminary inquiry on the following questions i.e., whether there exists any cause of action,¹³ whether the matter is filed before the correct forum having subject matter, pecuniary and territorial jurisdiction¹⁴, whether all the necessary persons are made party to the suit, whether correct valuation & relief has been made by the petitioner and whether the suit is barred by any limitation or not. Every single question is determined by the court before proceeding to decide the matter.

Following article: 36(6) of the statute of the ICJ¹⁵, the 'International Court of Justice' is empowered to determine both the *issue of jurisdiction* and the *issue of admissibility* before deciding any dispute in question.

With jurisdiction issue it means whether the court has appropriate right and powers to determine the case or not? In most of the cases the respondent state objects on the ground that the issue brought by the petitioner state is out of the purview of treaty or convention signed by the parties. Or the respondent state may look for any technical provision which would frustrate the proceeding even though the dispute is filed in correct forum. Under the second issue of admissibility ICJ determines two questions, first whether the parties have fulfilled all the essentials before taking up the matter for hearing or not? For example, in India before a plaint is admitted following questions are determined by the civil court i.e., whether any cause of action exists between the party or not? whether the documents are duly stamped, whether the relief claimed is undervalued or not, and whether the suit is barred by any law or not.¹⁶ The second question that is determined by the court is whether it's the correct stage to determine

¹² Statute of the International Court of Justice | Chapter: II | Competence of the Court | Article: 36(6) | <https://www.icj-cij.org/statute>

¹³ Om Prakash v Ram Kumar (1991) 1 SCC 441; C. Chandramohan v Sengottayan (2000) 1 SCC 451

¹⁴ Abdulla Bin Ali v Galappa (1985) 2 SCC 54

¹⁵ Statute of the International Court of Justice | Chapter: II | Competence of the Court | Article: 36(6) | <https://www.icj-cij.org/statute>

¹⁶ The Code of Civil Procedure | Act No. 5 of 1908 | The First Schedule | Order: VII, Rule: 11

the dispute or not? For example, in an ongoing suit of recovery of property if an application of temporary injunction¹⁷ is filed, the court need to decide whether there exists a prima facie case¹⁸, whether there is balance of convenience favour of the applicant¹⁹ and whether not deciding of application would cause irreparable harm to the applicant or not²⁰? Under the ICJ the respondent state takes the objection based on admissibility that there is lack of 'Locus Standi' on the part of application, second to determine the matter there is requirement to join the necessary party, thirdly that the dispute has already been resolved and last that the applicant has not exhausted all the remedies before filing matter in ICJ.

If the court after considering all the questions and objections raised by respondent states on the jurisdiction issue believes the objection to be true then under that situation the proceeding shall be terminated permanently, however, if objection is raised based on admissibility the court after considering the objections believes it to be true the court may suspend the proceeding till further order of the court.

III. 'THE JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE'

Jurisdiction is an essential condition (*sine qua non*) for every judicial authority before deciding any matter in dispute. The historic example of the concept can be observed from religious book 'Bible'²¹ wherein it is explained that when Jesus Christ was put on trial, the then Roman governor Pilate determined that Jesus was from Galilee which is outside the jurisdiction of his authority. And, since he does not hold the required jurisdiction to person belonging to Galilee he refused to try Jesus in his court. If we also consider the purview of jurisdiction of 'Supreme Court' in India it can be identified under article 32 of the constitution²² the Apex court have jurisdiction to enforce every right guaranteed under Part: III of the constitution by appropriate writs. In addition, the Apex court have five additional jurisdictions i.e., original jurisdiction for deciding disputes arising between different level of government in different combination, appellate jurisdiction wherein substantial question of law is to be determined, advisory

¹⁷ The Code of Civil Procedure | Act No. 5 of 1908 | The First Schedule | Order: XXXIX, Rule: 1

¹⁸ Martin Burn Ltd v R.N. Banerjee | AIR 1958 SC 79

¹⁹ Dalpat Kumar v Prahlad Singh | (1992) I SCC 719

²⁰ CCE v Dunlop India Ltd | (1985) I SCC 260

²¹ Bible Gateway | Luke 23:6-12 NIV | On hearing | Chapter: 23 | Verse 6 |

<https://www.biblegateway.com/passage/?search=Luke%2023%3A6-12&version=NIV>

²² The Constitution of India | Part: III | Fundamental Rights | Article: 32

jurisdiction on interpretation any provision of constitution & determining questions which is of public importance and Special Leave Petition following which any order, judgement or decree can be challenged before the apex court provided a substantial question of law is involved not deciding of which will cause gross injustice to the party in dispute.

After analyzing the concept of jurisdiction and their illustration with reference to the apex court of India it can be understood that every judicial authority derives its authority of jurisdiction from any particular source i.e., the apex court derive it's power from the constitution of India, other district court derives its power from the respective statute as per the nature of the right which is being enforced in court. Likewise, the ICJ derives its jurisdiction from ICJ statute²³ and subject matter jurisdiction from the UN charter. The ICJ in particular exercise two types of jurisdictions, first the 'original jurisdiction' and second 'limited appellate jurisdiction'. Among the original jurisdiction two kinds can be identified (i) 'Contentious Jurisdiction' (ii) 'Advisory Jurisdiction'.

1. CONTENTIOUS JURISDICTION: -

The contentious jurisdiction according to Richard K. Gardiner²⁴ means a decision of ICJ which are binding on the parties in disputes only meaning thereby that the principle of res judicate²⁵ is applicable following which matter once decided in court will restrict the parties to file the same matter in different court between same parties. In addition, for invoking the contentious jurisdiction of the ICJ article: 34(1) of the ICJ²⁶ statute prescribes that '*only states may be parties in cases before the court*' and the dispute between the parties must be on question of law or on conflict of facts or conflict of legal views. Another essential element for invoking contentious jurisdiction is '*The Consent of the Parties*' however, it is very important to determine the manner in which consent is given by the parties. Article: 36 of the ICJ²⁷ statute allows the courts to determine all the cases which the parties refer to them provided the matter

²³ Statute of the International Court of Justice | Chapter: II | Competence of the Court | Art: 34(1); Art: 36 | Chapter: IV | Advisory Opinion | Art: 65 | <https://www.icj-cij.org/statute>

²⁴ Researcher Associate | Fletcher School of Law & Diplomacy USA 1970-1971 | Practicing barrister 1972-74 | Assistant Legal Advisor Foreign & Commonwealth Office 1975-86 at Law Officer's Dept | Interest area Public International Law, Air Law, Intellectual Property, Private International Law, Human Right & European Community/Union Law and Public Law

²⁵ The Code of Civil Procedure | Act No. 5 of 1908 | Part: 1 | Section: 11 | https://www.indiacode.nic.in/bitstream/123456789/13813/1/the_code_of_civil_procedure%2C_1908.pdf

²⁶ Statute of the International Court of Justice | Chapter: II | Competence of the Court | Art: 34(1) | <https://www.icj-cij.org/statute>

²⁷ Statute of the International Court of Justice | Chapter: II | Competence of the Court | Art: 36 | <https://www.icj-cij.org/statute>

is specified in the UN Charter or in treaties and conventions in force. It is noteworthy here that consent may also be subject to certain conditions meaning thereby that consent may be conditional/limited and may also be unconditional. And, consent of parties may be expressed or implied from various areas i.e., by way of 'Special Agreement, by treaty or conventions, by compulsory jurisdiction, by forum prorogantum, and from interpretation of judgement'. In the following paragraph we'll discuss each area of agreement/treaty/convention in detail.

1.1 SPECIAL AGREEMENT: -

Under the special agreement both the parties agree to submit the matter in question through an express & unequivocal agreement to the ICJ. Both parties send the intimation of such agreement through a written application specifying the subject matter and parties to the dispute to the registry office of the ICJ.

*Anand Gajapathi Raju v P.V.G Raju*²⁸ it was held by the 'Supreme Court' that arbitration agreement signed by both the parties after the dispute has arisen, makes it obligatory for the parties to the dispute to refer the dispute to arbitration center as mentioned in the agreement.

*Tamil Nadu Electricity Board v Sumathi and Other*²⁹ it was held by 'Supreme Court' that an arbitration agreement made during the pendency of the law suit would be considered an agreement entered after the dispute has arisen and such agreement is binding on the parties.

1.2 TREATIES AND CONVENTIONS: -

Under this the state parties agrees either for bilateral treaty or for multilateral treaties wherein a jurisdiction clause is written specifying that for any dispute arising between parties in future under this treaty or convention will be decided by the ICJ. Herein, the party can unilaterally initiate the proceeding by a written application specifying the matter in dispute, the parties involved in the dispute and the provision of jurisdiction under the treaty or convention.

Article: 37 of the statute of the ICJ³⁰ allows the court to include all the treaties and convention which were executed before the establishing of ICJ wherein the jurisdiction clause refers the jurisdiction of '*Permanent Court of International Justice*'.

²⁸ 2000 (4) SCC 539 | <https://indiankanoon.org/doc/1703962/>

²⁹ 2000 (4) SCC 543 | <https://indiankanoon.org/doc/78791/>

³⁰ Statute of the International Court of Justice | Chapter: II | Article: 37 | <https://www.icj-cij.org/statute>

1.3 COMPULSORY JURISDICTION: -

Compulsory jurisdiction of the court can be observed under article: 36(2)³¹ of the ICJ statute. The provision prescribes that all the states which are party to the ICJ statute may at any time accept compulsory jurisdiction without entering into special agreement, and any dispute which may arise between parties who have accepted compulsory jurisdiction prior to the dispute will subject all their disputes relating to 'interpretation of treaty, any question relating to international law, determination of any fact and last the nature & extent of compensation for any breach.

1.4 FORUM PROROGATUM: -

The principle of Forum prorogatum prescribes that state can give consent for jurisdiction to the ICJ even after the proceeding has been initiated by the petitioner state, meaning thereby court that otherwise does not have jurisdiction to adjudicate the matter at the initial stage of filing would have jurisdiction to decide the same.

1.5 INTERPRETATION OF JUDGEMENT: -

Herein both the parties by way of agreement makes a written application requesting ICJ for determining whether the decision of the given legal dispute in the judgement is within the scope of jurisdiction or not.

2. ADVISORY JURISDICTION: -

According to Philippe Sands Q.C.³² and Pierre Klein advisory jurisdiction of ICJ is considered as weak principle of law which is not enforceable as compared to the other rulings of the ICJ on any legal dispute referred to them for adjudication. And, since it lacks enforceability, the decision cannot create a bar of '*res judicate*' on the parties. However, even then the principle of advisory jurisdiction holds great value in international law because it has the potential to build peaceful relations among nations. Article: 65 of the statute of ICJ³³ provides that the court may give advisory opinion on legal question to any organisation which is authorised as per the United Nations charter. However, states are excluded from seeking any opinion from the court.

³¹ Statute of the International Court of Justice | Chapter: II |Competence of the Court | Article: 36(2) | <https://www.icj-cij.org/statute>

³² Professor of Law and Director of the Center on International Court and Tribunal | Master of Laws: University of Cambridge, 1983 | Bachelor of Arts (Honours): University of Cambridge, 1982 | <https://profiles.ucl.ac.uk/7640-philippe-sands>

³³ Statute of the International Court of Justice | Chapter: IV | Advisory Opinion | Article: 65 | <https://www.icj-cij.org/statute>

The bare reading of article: 65 appears simple however, if we carefully analyze the term 'whatever body' in the provision it should not be interpreted literally because it does not give an absolute right to every organization to move for advisory opinion, the right is divided into two sects one as original and another as derivative. Under the original sect two organs are included i.e., 'General Assembly' and 'Security Council' has absolute right to directly ask for advisory opinion from ICJ. However, under derivative organizations other than the 'General Assembly and Security Council' has to obtain prior permission from the 'General Assembly' before seeking opinion from the ICJ.

IV. 'ISSUES FACING THE ICJ IN THE 21ST CENTURY'

The head titled above deal with four sub-issues which hinders the true functioning of ICJ since its establishment in 1946. It also highlights the concerns that if such practice would be followed continuously it will cause great damage to the court's legitimacy and impartiality. The first sub-issue deal with the process of election and re-election of judges at ICJ. It is highlighted previously as well that the nomination of judges for fresh appointment is done by UN General Assembly and thereafter the final list is given to the UN Security Council for their election. However, in re-election the procedure is different and arbitrary. In ICJ there is no prescribed age of retirement following which any judge who has served prior has the option for re-election. The process of re-election is funded by the government of the country of which he/she is a national of. Following the procedure as discussed hereinbefore the judge does not act independently for a simple reason that if he'll act against the interest of his country tomorrow his country government will not support him for his election. The second sub-head deal with the issue of extensive powers of the 'United Nation Security Council' which causes impartiality in the functioning of the ICJ. Article: 94(2) of the statute of ICJ³⁴ provides that if the decision of the ICJ is not followed by the respondent state the petitioner has the option to enforce the same by making an application before the UN Security Council. And, the Council after considering the circumstances and the recommendation will decide and give effect to the decision. Following such practice the permanent member of the 'Security Council' will never allow such decision of the ICJ which will affect their interest in future. In addition, the extensive power of the permanent member to have compulsory one member in ICJ will also further deteriorate the decision as per their interest. The next sub-issue which hinders the

³⁴ United Nations Charter | Chapter: XIV: The International Court of Justice | Article: 94(2) | <https://www.un.org/en/about-us/un-charter/full-text>

functioning of the ICJ is '*The Issue of the Courts Compulsory Jurisdiction*'. The concept of compulsory jurisdiction as prescribed under article: 36(2) of the ICJ³⁵ state allow member state of the statue to accept compulsory jurisdiction of the court to determine any legal question or dispute which will arise in future. The said provision is also open for all the five permanent members of the UN Security Council, however four out of five have rejected such jurisdiction of the court setting a negative precedent in the mind of other member states following which the ICJ is not able to decide the crucial questions of nations which are necessary for their development. *Military and Paramilitary Activities in and against Nicaragua v United states of America*³⁶ is a perfect example wherein court held Unites States guilty for breach of obligation under customary international law by using force. However, United States never complied with the decision and also the 'Security Council' never took any action to enforce the same. Another precedent which reflects the inefficiency of the court is *United States Diplomatic and Consular Staff in Tehran*³⁷. It was held in this that Iranian government has violated the legal obligation prescribed under Diplomatic and Consular Convention. It was directed by the court to release the hostages and American diplomats however the government never respected the order. When the execution application was filed before the 'Security Council' permanent member approved the decision because the interest of Unites States was involved. Such practice of enforcing agency reflects biasness in their decision and also violation of paramount important principle of basic structure i.e., 'Independent Judiciary'³⁸ which illustrates that executive agency i.e., 'Security Council' should be separated from performing the function of judiciary.

The fourth & last sub-head titled as '*The Nomination of the Ad Hoc Judges By parties*' discuss the violation of the principle of natural justice i.e., '*Nemo Judex in Causa Sua*' by allowing party state to nominate ad hoc judges of same nationality to which the party state belong in circumstance where no judge of same qualification is available at hand. On purpose interpretation of article: 31³⁹ as discussed hereinbefore it can be understood that it was legislated to protect the interest of the state and create an apprehension that fair and impartial

³⁵ Statute of the International Court of Justice | Chapter: II |Competence of the Court | Article: 36(2) | <https://www.icj-cij.org/statute>

³⁶ Internation Court of Justice: 14 | 1984 I.C.J. 392 | <https://opil.ouplaw.com/display/10.1093/law/icgj/111icj84.case.1/law-icgj-111icj84>

³⁷ United States of America v Iran || 15th December | 1979 | I.C.J. 7, 21 | <https://www.icj-cij.org/case/64>

³⁸ S.P. Gupta v Union of India | Case No: 19 of 1981 | <https://indiankanoon.org/doc/112850760/>

³⁹ Statute of The International Court of Justice | Chapter: I | Organization of The Court | Article: 31 | <https://www.icj-cij.org/statute>

trail is guaranteed under ICJ. However, after analyzing its operation in execution and the practical result the mischief can be identified that the ad-hoc judge typically vote for their nation irrespective of the majority decision decided by the member judges of ICJ.

❖ CONCLUSION: -

Every country holds constitution for ensuring that rights of individual are not violated however holding constitution is not enough until and unless the principle of constitutionalism is followed by the judiciary in its true spirit. If Indian Supreme Court would have not upheld the principle of constitutionalism the political leader would have followed rule of men which would in long run effected the development of nation.

The International Court of Justice act as the '*principal judicial organ*' for resolving disputes and for maintaining peace & security among member states. However, the purpose outlined hereinbefore is influenced by all those factors which is highlighted under the fourth head of the literature review which if not resolved would affect the efficiency of the ICJ to resolve issue evolving in modern world i.e., environment protection, terrorism, drug & human trafficking and cyber-crimes prevalent throughout the globalized world. In short, rule of men will override the rule of law.

The researcher professes to provide some recommendations which would increase the efficiency of the court. The first recommendation would be to make the acceptance of compulsory jurisdiction as mandatory rather than a matter of choice. ICJ hold the position of global judicial authority adjudicating disputes between nations. However, following the principle of discretionary choice of state for choosing the jurisdiction of the court, they have made the institution a puppet whose threads are given in the hands of member states using which whenever they want their matter to be adjudicated, they will opt ICJ for deciding their case otherwise not. The recommendation discussed hereinbefore would be more impactful if it is first applicable on all the five permanent members of the 'Security Council' as their practice of not accepting the provision of compulsory jurisdiction has set a negative precedent for other nations.

The second recommendation is limiting the power of 'United Nation Security Council' in reference to the International Court of Justice. Compulsory appointment of judge from each

permanent member of the 'Security Council' have created their dominance in court which in turn hinder the impartiality of the court. Additionally, the power of the council to enforce the decision of the court have generated a conflict of interest meaning thereby that if the permanent member believes any decision against their own interest, they would not enforce the same. Again, creating inefficiency in the functioning of the court⁴⁰.

The next recommendation would be abolition of article: 31⁴¹ of the statutes of the 'International Court of Justice' because the idea/purpose behind making the provision was never achieved and this has only practice for violating the principles of natural justice especially the principle of Nemo-Judex in Causa Sua which means that no one can be a judge in his own case.

Last, amendment in the procedure of election and re-election should be made. Currently, the whole procedure gives power in the hand of 'Security Council and General Assembly' wherein the latter would nominate the member and former will conduct the election. The role of both the authorities is different; one has authority of execution and other has the authority of legislature respectively. If power of appointment of judges is given in the hands of the hereinbefore discussed authority again the principle of Independence would be violated because the general assembly will nominate those members who will benefit their interest in future.

Following the recommendations, we can ensure that composition of ICJ with reference to the appointment of judges through election process could be made fair and transparent. Making compulsory jurisdiction as mandatory will ensure court's efficiency to deal with dynamic disputes that are arising because of growing globalization. And limiting the power of 'General Assembly and Security Council' will ensure that the principle of Independent Judiciary is uphold.

⁴⁰ Ibid | 1984 I.C.J. 392; I.C.J. 7, 21

⁴¹ Statute of The International Court of Justice | Chapter: I | Organization of The Court | Article: 31 | <https://www.icj-cij.org/statute>