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**ECONOMIC EMPOWERMENT OF SOUTHERN AFRICA**

**ECONOMIC EMPOWERMENT OF THE POOR BY ENFORCEMENT OF SOCIO-ECONOMIC RIGHTS THROUGH PUBLIC INTEREST ACTIONS: LESSONS FROM INDIA**

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**ABSTRACT:**

*In England justice is open to all – like the Ritz Hotel (James Mathew: 1830-1908)*

Since 1994 the doors of the courts have been ajar to all who have justiciable disputes to settle. However, litigation is not something the average citizen contemplates to protect or enforce a right, due to the exorbitant cost of justice and lack of knowledge and resources of the majority.

While the distinction between categories of rights has fallen away, social and economic rights in practice are still deemed 'second generation' rights, enforceable so long as there are 'resources' available to ensure their fulfilment. This viewpoint and approach flies against the spirit, purpose and underlying values of the 1996 Constitution, as confirmed by the Constitutional Court in the recent *Grootboom* case. Nevertheless, the reality in South Africa is that the underprivileged masses are unlikely to be able to enforce or protect their social and economic rights under present circumstances.

This paper will examine constitutional provisions relevant to social and economic rights, generally as a foundation and framework and especially in so far as they relate to the local government sphere. It will highlight problems or challenges relating to their implementation and analyze the few South African constitutional cases dealing with them.

The core and thrust of the paper will be to critically evaluate the Indian constitution's provisions relating to socio-economic rights and particularly the approach of the Indian Supreme Court in giving effect to them in a pragmatic manner. Such analysis will deal with –

- judicial activism as a necessary adjunct to fundamental rights promotion and protection;
- public interest litigation (or social action litigation) as a means of enforcing and protecting socio-economic rights of and by the disadvantaged masses;
- the various innovations developed by the Indian Supreme Court;
- role of activists and the media in promoting and protecting socio-economic rights of the marginalized sectors;
- public interest actions and class actions in South Africa: how they can be developed, following the Indian example, in giving effect to social and economic rights of the poor;
- select issues requiring detailed investigation in South Africa; and
- structures and procedures suggested by the Indian experience.

The analysis of cases dealt with by the Indian Supreme Court relating to the promotion, protection and enforcement of fundamental social and economic rights will provide valuable indicators to South African decision-makers on practical strategies for the economically efficient planning, protection, promotion, enforcement and monitoring of select legal and fundamental socio-economic rights as a means to social development or poverty alleviation.

India has many similarities with South Africa. The experiences on the sub-continent will be a great help in developing appropriate local models aimed at giving effect to the promises explicit and inherent in the Constitution, without going through the lengthy period of pain the Indian community has endured over the past half-century.

ESSAABSTRACT  
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