CHAPTER-VI

JUDICIAL RESPONSE TO SOCIAL DEMANDS – MUTUAL RELATIONSHIP BETWEEN THE PARLIAMENT AND THE JUDICIARY IN INDIA.

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A. JUDICIAL ACTIVISM AND SOCIAL JUSTICE

The court has played on effective role in bringing about the social justice through its interpretation of the policy of reservation in areas of education and employment in the Government services. The court seeks to balance the social welfare on one hand and the right of the individual on the other. A series of cases have been filed in the court, and a number of heated controversies - took place with regard to the "Provisions of the constitution which comes under the protective discrimination. Some of the judgements of the Supreme Court has been countered by the Government - with regard to the policy of reservation or seats in the professional college. In Champakan Dorairanjan case[1], the Supreme Court, overruled the reservation policy - since it violates the "Article 14... the right to equality" - The Madras Government has however argued that Article 46 - has overrule Article 29(2) of the constitution - which emphasized that "State shall makes provision for the welfare of the scheduled castes. The Supreme Court rejected the argument of the Government and held that Directive principles cannot override the fundamental rights. This led to the First Amendment of the constitution in 1951. Clause (4) has been included to Article 15 of the constitution. It states that clause (2) of Article 29, shall not present any state from making any special provision for the advancement of any socially and educationally backward classes - as the Scheduled Castes and Scheduled Tribes. From M.R.Balaji case till the Indra Sahwney Case the Supreme Court ruled that Clause 16(4) was an exception that they shall have equality of opportunity in competing for employment in

government services[2]. The reservation for employment in government services should not exceed 50 percent limit. But there was exception in Tamil Nadu, where 69% of the jobs have been reserved on the caste basis. The Tamil Nadu Government challenged the High Court order – and approached to the Central Government to include the Tamil Nadu Backwards Classes – Scheduled Castes, Scheduled Tribes Bill in the Ninth schedule of the Indian Constitution, to protect the legislation. Though the 76th Constitutional Amendment Act and the 9th schedule has been included in where the court has no power to over rule.

In Indra Sawhney case Vs the Union of India[3] the Supreme Court has resisted the reservation in the government employment specially in case of protection. The promotion should be kept outside the scope of reservation. So Clause (4) has to be added to Article 16, by the 77th Amendment Act of 1995. Clause (4) A state that" "Nothing in the Article shall prevent the state from making any provision for reservation in matters of promotion to any class or classes posts in the service under the statement in favour of SCs/STs which in the opinion of State are not adequately reported in the services under the state".

In Indra Sawhney Case the Court reaffirmed that total quantum of reservations including the ones carried forward from the preceding years should not exceed 50 percent. According to the 81st Amendment Act, 2000. "Reservation made under clause (4) of the Article 16 shall be considered as a separate class of vacancies to be filled up in any succeeding year or years and this class of vacancies shall not be considered together with the vacancies of the year in which were being filled up for the purpose of determining the ceiling of 50 percent. Some relaxations being done for the candidates, who can challenge repeatedly in the courts. In S. Vinod Kumar Vs Union of India (1996) 6 sec 580[1], the court held that in view of Article 335, some standard cannot be relaxed, in the case of promotion in the Government

services. This was reaffirmed in the Indra Sawhney Case. But some relaxation in the qualifying marks and standards of evaluation in the job reservations and promotions has been made for SC/STs in the 82nd Amendment Act 2000. The promotions in the Government Departments is been determined by the Roster Systems, "By this system, specified vacancies at each level came to set apart for persons – who belong to such castes. The Clause (4A) which is included in Article 16 – was further amended – especially in the matters of promotion and consequential seniority to any class"[4].

According to the orders of the Supreme Court no reservation should be in private unaided institution and there has been a controversial issue on 93rd Amendment Act. Clause(5) has been added to Article 15 – "Nothing in this Article 15 or in subclause (g) of clause (1) of the Article 19 shall prevent the state from making any special provision, by law, for the advancement of any socially or educationally backward classes of citizens or for the Scheduled Castes as for the Scheduled Tribes in so far as such special provisions relate to their admission to their educational institutions, whether aided or unaided by the state, other than the minority educated institutions refer to clause (1) of the Article 30". The Amendment so far been made overruled the decision of the Supreme Court. In the case of private institution and unaided colleges there shall be no reservations, but the Supreme Court made no differences between the minority and non-minority institutions. The Government, so far, gave emphasis are the Mandol Commission Report, which granted 22.5 percent seats for the other Backward classes. Article 14, 13(2), Article 31, Article 368, Article 21 and Article 39(A) has empowered the Court in interpreting the constitutional provision. The Court has expanded its power in judicial innovation and interpretation of constitutional provision. Through the policy of reservation, the court tried to balance the backward classes and other sections in the society. Jawaharlal Nehru,

while deliberating speech in the Constituent Assembly – said that "the spirit and the philosophy of the constitution would be disturbed if judiciary is accumulated with more and more power". As the same time the important once of the Independence judiciary is recognized. The judges had to work under certain limits..... since the constitution is creature of the Parliament, Supreme Court can never deliver its judgement over the sovereign will of the parliament. The executive through its constitutional amendments resist the powers of the judiciary.

Protection of "Woman" – against the Violation of Human Rights. In Indian families domestic violence has been age old evil, which has been still persisting. The dowry problem, the crime against women has been recognized as a social problem. The women is been tortured, harassed, in the public places. The Sexual assault has been a day to day affairs within the society. The Indian Supreme Court actively removed the gender differences and render justice to the women. In Visakha Vs State of Rajasthan[1], Case, the constitution provides Article 15 – which prohibits discrimination on the ground of Article 15(3) empowers the state to make special provisions for women and children. Article 16 speaks of equal opportunity. Article 15A (e) in Part IVA provides that it is the duty of every citizen to renounce practices which is against the dignity of the women.

In the case of Madhu Kishnan Vs State of Bihar[2] the Supreme Court considered the provisions of conventions on the Elimination of all forms of Discrimination against women in 1979 (CEDAW) and held that the scheme is a part of both fundamental rights and directive principles. The concept of gender equality is also been focused in "Nilabati Behera Vs State of Orissa[3]. Protection of Human Rights prevent gender based discrimination. Though the Dowry prohibition Act been passed in 1986, to curb the dowry death, but violence against the women, is still increasing.

According to the recent decision of the Union Government, the Scheduled Castes and Scheduled Tribes (Dalits) student are been restrained from taking admission in professional course. In order to join the Ggovernment, private Professional Course. The necessity for the scholarship eligibility marks is raised to 60%.

Today Dalits comprises of 16.2% of the total population. According to the hierarchal of the caste system, they belong to the lower caste both by birth and occupation. They are socially, economically backward, and had to depend on the upper castes, for the low earnings 60% of the Dalits are the landless agricultural workers and nearly 50% of the people live below the poverty line. Education among the Dalits was negligible. In the recent years a good number of Dalits student score high marks and could get selected in the professional college, in the open quota. Due to their weak financial situation they are unable to join such colleges. The most backward class, often fear that their deteriorating situation is only due to the caste prejudices. They are denied of "the right of education", they are politically and economically weak and powerless. Their raised a "hue and cry", for their protection of Fundamental Rights. The class-which requires a immediate progress.

III. <u>The Gujjar Agitation in the State of Rajasthan</u>:

It was a claim of the "All Gujjar organisations the Gujjar Arakshan Sangarsh Samiti, all India Gujjar Mahasabha and Akhil Bhartiya Gujjar Sangaharsh Samity, to give them status of Schedule Tribes. They insisted the State Government to give special recommendation enlisting Gujjar as Schedule Tribe category. On 26th May, 2008, the Vasandhara Raje Government requested the Prime Minister, Manmohan Singh to make some constitutional amendments with regard to the provision separate representation for certain communities like Gujjars, Gadias, Lohars and Banyauas. These

communities classified as Backward classes in the state. The centre pointed out that these nomadic tribes, or the ethnic groups – having the homogenous character, may come under schedule castes of Schedule Tribes, if the situation so demand at the cost of public interest[8]. But this has been resented by the Secretary of Akhil Bharatiya Gujjar Mahasabha. A five member committee headed by the state Home Minister G. C. Kataria was set up 2005 to examine the conditions of Gujjars in the districts. But G. C. Kataria Committee Report has submitted the economic conditions of Gujjar community. It did not satisfy the Gujjars Mahasabha Committee. Another committee was set up under the Chairman of Justice Jash Raj to investigate the primitive conditions of Gujjars. According to the Chopra Committees Report, the landholding to the Gujjars were smaller than the State average. 16 districts of Rajasthan are occupied by the Gujjar, whose, only occupation was the livestock rearing. The survey report of the Chopra Committee says nearly 29,747 Gujjar's family has spreaded over 20 districts[9]. They live in the remote areas where the electricity has not been connected in the homes. Nearly, 77% of Gujjars lived in the livestock rearing and farming. On the basis of the Chanda Committee Report 1967, the Gujjars claims for "States of Schedule Tribes"- The criteria for such claims is due to "geographical location, primitive culture and traits of poverty and backwardness. In 1986, the Gujjar Mahasabha has filed a writ petition in the Supreme Court demanding 87 Schedule Tribe States for the community. Justice R. N. Verma stated that Gujjar Community could be a treated as Schedule Tribes, but it is totally under the discriminatory judgement of the President. The Gujjars agitated for the positive demand of their rights from the state govt. but the Congress Party who had been ruling, turned to a deaf ear to such agitation.

P.S.Krishnan, Secretary of government of India discussed about a rational solution for catagorising and subcategorizing the backward

classes in each state. There have been a number of agitations in several states like Kerala, Andhra Pradesh, Karnataka, Orissa, Bihar and Madhya Pradesh. These agitations were mainly done by the communities, who expressed their feelings in a form of protest. The Gujjar agitation in Rajasthan is one of such communities who raised a voice of equality within the Backward Classes. Various Committees in various districts and therefore failed to identify the backward classes. For instance "Nagan Gowda Committee 1960, Karnataka, could not identify the" backward classes who are been adversely affected. There are other communities who are most backward than others. In the post independence era, the committee in Karnataka was first recommended to categories the Backward and Most backward classes". The Banniers of Tamil Nadu – agitated for the due share of reservation Backward Class category. The categorization and the sub categorization of the Backward Classes indeed a difficult task for the state governments of Andhra Pradesh and Tamil Nadu. After the Mandal Commission in Report, was published, another commission was recommended under the chairman of L. R. Naile who substantially divided the backward classes into two backward class and the depressed classes[2]. In Balaji Vs State of Madras, 1963 the Supreme Court had prohibited such classification of backward classes. But in Indra Sawhney Case (1992) and the Supreme Court gave a slight different judgement, where sub-categorisation of Backward class was not "Unconstitution" if it was on the basis degree of backwardness. P. S. Krishnan, who was appointed as a member of expert committee gave the detailed list of "Socially and educationally backward class". Most of the categorization is been done on the basis of Mandal Commission Report. What P. S. Krishnan wants that if the categorization is done rationally. Than there would not be any silent grievances.

The sub-categorisation is done effectively in state of Uttar Pradesh and Rajasthan when Rajnath was the Chief Minister of Rajasthan. Mayawati's government, effectively categorised the Backward and the most backward classes. If the categorization is exercised on the socio-economic basis – the backward classes would have its due share of reservation in the state of Rajasthan. The government can entitle 2% of reservation for the other Backward Classes. In the similar way the Maharashtra Government divided "denotified categories and the nomadic tribes, special backward category and other backward classes – which comes under the "Socially and Educationally Backward Classes". The central Government and State Government must cooperate together for the "categorization of Backward Communities" in state list as well as the central lists.

Right to Education in the form of Social Justice:

There has been a strong debate between the petitioners on one hand the respondents on the other regarding "the equity in education". The validity of the 93rd Amendment Act inserting Article 15(5) which does not violate the violate the basic structure so far as it related to aided educational institutions. The petitioners have challenged the validity of Central Educational Institutions (Reservation in Admission) Act 2006, which provides for the students belonging to SC, ST and OBC categories. The Supreme Court has delivered a separate judgements in Indra Sawhney Vs Union of India (Mandal I Case) and Ashoka Kumar Thakur Vs Union of India (Mandal Case II)[1]. In Indra Sawhney Case, a bench of Nine Judges uphold 27% reservation for the other Backward Classes in the Central Services. This has inevitably castes its shadow over the opinions rendered by the judgement of the later case. Article 15(5) of the constitution has been insisted in 93rd Constitutional Amendment Act, 2006, according to which the state has the provision of making laws for the

advancement of socially, and educationally backward classes of citizens, especially the scheduled castes and scheduled tribes, in connection with the admission to the private educational or aided, unaided institutions runned by the Government.

Chief Justice K. G. Balkrishnan delivered a judgement, in favour of the inserting Act (15)5 in the 93rd Constitution Amendment Act. Moreover the quota of 279. Reservation for the OBC's is not illegal since the time limit is not prescribed for reservation.

The Arguments put forward before the Five Bench of Five judges began in 7th August 2007 ended 1st November 2007. The petitioners Ashoka Kr. Thakur, P.V. Indirsan, K.K. Venugopal were against the reservation of OBC. The Respondants like G.E. Vahanvati, Solicitor General of Union of India, Gopal Subramaniam the additional solicitor general, Rakesh Devedi faced a huge challenge. An interim order was partly stayed under section 6 of 2006 Act on 29th March. The order was granted only when the petitioners claim. General of India, Gopal Subramanian, the additional solicitor General, Rakesh Dwivedi faced a huge challenge. In interim order war partly, stayed under section 6 of 2006 Act on 29th March. The order was granted only when the petitioners, claim. The Act passed has violated the fundamental Rights – "The Right to Equality". Even though the respondents gave credible reason to counter the grievances of the petitions. The petitioners, were defended by the Chief Justice on the ground that the classes had political background which had provided reservation policy for the OBCs. The validity of constitutional amendment and plenary legislation is subjected to the constitutional law. Rajiv Dhawan argued that the reservation policy created a discrimination between the general categories and the beneficiary groups. The doctrine of the Equality is been adversely affected. K. Parsasarm argued that the education and economic well being of an individual gave him a special status in the society. A feeling of interiority will disappear from a large

number of OBCs, SCs, STs who get education and serves the government offices, Parliament, legislative assemblies and various professions. The National Commission for Backward Classes included 297 categories of Backward classes out of which 288 categories includes the main castes and 243, includes the sub-castes. The National Commission for Backward Classes included Chausas of Orissa as the backward classes. But they were not included in Mandal Commission Report. The chaksas are the cultivators belonging to the middle and lower peasantry. NCBC has noted that a negligible portion of Chausa Community are found in class-I governmental jobs and other profession. The Jats of Rajasthan, Lingayats Castes and sub-Castes are been included in the list of Backward Class. The seats reserved for the OBC, left vacated – till critical recruitment of the creamy layer is being fulfilled. The Chief Justice, thus allowed the government to relax the criteria for the Central Jobs, if necessary, so that sufficient number of OBC candidates can fill seats reserved for them[10].

P. S. Krishnan, the former secretary of the Government of India, and the former member secretary of National Commission for the Backward Classes made a landmark litigation before the Supreme Court with regard to the policy of reserving 27% seats for OBCs in Central Educational Institutions. He drafted the office of Memorandum fixing 27 percent reservation for OBCs in Central Services in 1990 which was upheld by the Supreme Court in 1992 in the Indira Sawhney I (Mandal Case). The recommendation so far been made – was acknowledged by the governed. In Ashoka Kumar Thakur and others Vs Union of India Case (Mandal II case), Krishnan effort in this Case, was remarkable, since his presence has strengthened the government's case. For the first time, the scheme of equality included not only in the education but also in society. In the important institutions like IIM and IITs. The backward classes got privileges of

getting admission through quota. Reservation includes, "land reforming policy, distribution of land. ... quality of education at different level, the right from the primary to higher level education. The review of the socially, educationally and the backward classes list was be done after every two years. The identification of backward classes, is mainly due by National Commission for the Backward Classes. This identification was also done by the Mandal Commission. The Commissions of all states expressed their views, regarding the inclusion and exclusion of castes from the Backward Class List. A community is said to be backward, due the "long drawn operations of the social process". In the words of P. S. Krishnan – "No indigent Commitment, nomadic or semi nomadic, can be graded but the barbers, washerman, cobblers have never ceased to be backward. The various committees and commissions are recommended by the state to revise the list of communities included in the Backward class.

The Justice Raveendran in his judgement, said if the members belonging to OBCs, selected on the basis of their merit, should be counted against the 27% quota reserved for OBCs under the enactment enabled by Article 15(5)[11]. Those who got admission through merit shall not be included in the reservation category. It has been pointed act that the criteria for identifying the socially advanced person among the Backward Classes comes in the way of securing adequate representation to the classes in services. Since admission to an educational institution IIM, IITs has become costly it has because quite difficult for OBC candidates to get admission, even though they get through merit basis. In such cases the seats of such institution remain vaccant. The reservation policy may not solve all the problems of a society but it ensures the social justice to the disadvantaged groups, to a certain extent.

Judicial activism is a part of the Judicial process where judge not only interpret the laws but also make the laws which may not be

found in the statistics. The judicial Activism, can be of two fold policy (i) Judicial Policy (ii) Legal services to the society in term of Social action litigation (SAL) or public interest litigation (PIL).

B. CASE STUDY:

a) Scheduled Castes / Scheduled Tribes:

The Raya Sabha has directed Union Home Minister, Mufti Mohammed Sayeed to collect all the facts regarding an attempt to force scheduled caste women to dance in the nude in a village in Seopuri district of Madhya Pradesh. Deputy Chairman (Mrs. Najma Heptullah) after hearing members from all sections of the house said that it was serious matter and the guilty must be punished, she asked the Home Minister to furnish relevant information about the incident. Congress (I) members, particularly Miss Sajeeda Khatun, and Mrs. Satya Bahin clashed with Mr. A. B. Vajpyee (BJP) when they alleged that village Sarpanch who was responsible for the outrage, belonging to the BJP. Mr. Vajpayee stoutly denied this and in turn alleged that Sarpanch has a Congress Support. The issue was raised by Mrs. Jayanthi Natarajan Cong (1) who said when the women refused to dance at the beat of drums by men, they were beaten up by the local people for defying what they called an age old tradition[12].

b) Political Power for Dalit Uplift:

So long as the dalits and minorities do not unite to fight against the oppressive forces in our society and gain the political power. There will be no liberation for them economically and socially. Which the speaker felt speakers at the seminar on dalits and minority unity held in Bangalore recently (in the Southern Zone Seminar). The Joint Action Committee was organised to look after the needs of Dalits, backward classes and minorities. Mr Bojja Thakaran of Dalit Mahasabha said that unless the centre takes the initiative of implementing the Report of Mandal Commission. The unity among the

Dalits, Schedule Castes and Scheduled Tribes and Minorities cannot be forced, to seek political power[13].

The welfare minister Ram Villas Paswan, in 1990, in one of the Tribal Conference said that relevant laws should be provided in according to which tribal can protect their rights and land from the interference of non tribals and those who are willing to purchase their lands. This has placed in the Ninth Schedule. The relevant laws in the ninth schedule has no doubt protected all the tribals against the establishment of heavy industries "projects" on the tribal lands. Though their purpose was to develop the tribal areas but it did not help them at any cost. The acquisition of the land was specially for public purpose. Land transfers between adivasis and non adivasis should not be allowed, under any circumstances. Another proposal was put forward by the Government that the tribals would be free of debt both from banks and private lenders, seventy two percent of tribal indebtness, arose through non formal lendings. Any laws relating to forest, should be made consultation with the Tribals. The Minister has also observed that the main reason for the land alienation of tribals was that no settlement had been done of tribal land. No land pattern existed due to which disputes could not be settled. Even the surplus land given to the tribals under the 20 point programme had not been surveyed so far. The then Prime Minister V. P. Singh observed that the laws framed for the benefit of the scheduled tribes and the depressed classes failed to produce the desired results as expected by the Government. The planning according to the Land Perform Policy of Ninth Schedule, did not come under the purview of the Judiciary[14]. The Prime Minister V. P. Singh in the National Conference held in New Delhi, has raised the problems of Scheduled tribes in the capital. He urged that not only the Government but also the society must play an important role in solving the problems of the depressed classes. Along with the

decentralisation of administration and the involvement of the Schedule Tribes in forming the programme, policies and projects would help them in the path of program to some extent. The Integreted policies, for the improvement of environment, ecology, forest and marketing facilities would help the Tribes to sale their products at different costs. While discussing about the land reforms. The Prime Minister said though the land reform conferred the rights of land to the landless, tribals, it proved to be ineffective, due the judicial negligence towards the tribals. So, once more was called for a careful scrutiny of each provisions as laid in the ninth schedule[15].

c) The Rights of Tribals:

The Adivasi Organization was looking forward for the judgement of the Supreme Court on seeking the protection of all forests in the country. They highlighted the fact that environmental legislations has largely ignored the independence between the Adivasis and the forest.

T. N. Godavarma had logded the "Case" against the government since millions of adivasi dwelling in the forest, demanded the "protection of forest should not under the control of Authorities of the Forest Department. The petitioner had explained that illegal practice with encroachment in the forest and corruption are practised by forest bureaucracies. In 1996, an interim order was passed in Gadavarman case and subsequent directions to specific states, the Supreme Court substantively enlarged the powers of the forest authorities. This has encouraged the forest officials to uproot the poorer people from their land and the officials had rampage the forest, without providing any benefits to the tribals.

The Adivasi organization, had raised a protest against the mass evictions of the tribals and forest dwellers. In Delhi, several the crucial questions were raised about the control of resources and substantial development. James C. Scott, in his book "Seeing like a state – How

Certain Schemes for Improving the Human Condition Have failed" – examined the origin and impulses of forest arrangement which was done by the European, a couple of centuries ago. In Colonial times, forest were viewed purely through an exploitative commercial purose which turn nature into natural resources, the trees for timber. Adivasis were perceived as a threat to this arrangement and the British Raj systematically acquired Adivasi landholding and reallocated them from the forest. By 1865, the state has restricted access to the forest in order to continue its unimpeded harvest, of teak, its single largest cash crop. But after independence, the Government of India has continued to exploit the national resources and compelled the marginalized Adivasis to leave their land. The Forest Conservation Act (FCA) of 1980 emphasis that 22% of the country's land for forest conservation, including areas recorded as forest in any Government Record[16]. Due to the illegal practices o the bureaucrats, the revenue of the lands that had been supporting the livelihood of the tribal had been arbitrarily been scaled off. The unclear demanation of the forest and revenue lands was further complicated by the Supreme Court's definition of the forest in the discrepancy sense as "an extensive area covered by the trees and bushes with no agriculture. This means that areas were totally handed over to the forest department. Thus these lands were totally disrupted. The Community Management of village forest was totally ignored. In May 2002, an interim order of the court requested the government to report on the status of encroachment in forest lands. However the Ministry of Environment and Forest (MoEF) issued a circular to all states ordering them to evict all "the encroachers" immediately.

There are thousands of cases, where the tribal people and the forest dwellers claim their genuine land. The Supreme Court, considered them as encroachers and evicted them from their own land

areas. Since the revenue departments often did not records land settlements or the conversion of forest villages, into revenue villages, the inhabitants are being evicted by the forest department. The utter negligence of the State, had led the victims to suffer. The Adivasi Rights has not recognized the bureaucratic inaccuracy, apatty and corruption in the implementation of National Forest Policy of 1988.

Indeed the Conservation logic seems rather obscure considering that almost half of all Adivasis are landless. Even if they do cultivate land, this tends to be subsistence cultivation focused on food crops. Adivasi families supplement this food supply with wage labour and food gathered from the forest. On the other hand, despite the professed intention of evicting all encroaches the activities of timber merchants, land sharks, and commercial planters who have been responsible for ravaging tens thousands of hectares of forests land across the country, which have gone on unhindered.

In fact both the FCA and the Supreme Court's interim orders have been used by the MoEF and the state forest departments to state their claims to lands under revenue departments. The attempt to 'clear' forests is blatantly one sided as it overlooks the provisions protecting Adivasi Rights, including these to laid down in the 73rd constitutional Amendment, the Fifth Schedule and Article 244(1) of the constitution.

In 1990, according to 29th Report of the Scheduled Castes and Scheduled Tribes Commission under B.D.Sharma had drawn a clear, unambiguous, framework to settle the encroachment issue. Keeping in mind both conservation interest and livelihood security of Adivasis and other forest dwellers. In a set of six guidelines, it suggested that all encroachment made prior to FCA would be settled and those made after that be carefully examined, distinguishing the claims of the tribals people from those encroachers. Besides making it mandatory

for the states to come up with schemes, to provide alternative means of livelihood to those effected, the recommendation also sought to provide alternative means of livelihood to those affected, the recommendations, involve village communities in settling disputes and ensuring lasting solution. The Report covered disputes regarding pattas, leases and grants involving forests land and suggested that Centrally sponsored schemes involve members of the Scheduled Tribes and the rural poor in afforestation projects for degraded forests[17].

However, the progressive spirit of this report has been consistently ignored by policy makers, who have chosen to publicise only one of the six circulars included in the Report, which deals with the encroachment issues. According to the Central Empowerment Committee set up by the Supreme Court, only the First Information Report (FIR) under the Relevant Forest Act shall be basis for deciding whether an encroachment took place before and after October 25, 1980, effectively making the forest bureaucracy's decision to be the last word in settling the issue.

This process bluntly violates the constitutional protection for tribal welfare. According to Article 338(9) of the constitution, The National Commission for Scheduled Castes and Scheduled Tribes should be consulted in all such matter. However the Central Government Committee has not bothered to evolve even state tribal welfare departments or the Ministry of Tribal. Welfare in a campaign that systematically displaces close to a crore of people. How can such conflict be resolved without consulting the people whose lives and livelihoods are vitally dependent on the outcome.

As James Scott, explains, nomadic bonds do not fit in high modernist maps or even those of less hubristic administration. Therefore, they must be settled. Rooted communities can also rose

problems with their inscrutable customs, mysterious languages and opaque forms of property ownership. So they must be invaded, homogenized and if necessary resettled. Bijay Panda, who has been agitating for tribal rights in Madhya Pradesh and Chattisgarh cells the tribal people to free themselves from "the bonded slavery". Adivasi's constitute 7% of the national population and unfortunately, their cause is championed move by social movements and nongovernmental organisations and an authentic, Adivasi political movements is yet to emerge. Beyond the crucial human rights issue at stake, there are several compelling reasons for the state to recognize the Adivasi Agenda for development.

Unfortunately, environmental legislation is largely dominated by western and urban concepts of forest as pristine wilderness and human beings as marauders and show strong disregard for an age old system of interdependence. Conservation programmes initiated by international institutional, such as the World Bank fail to recognize the symbolic blood link between forests and people. Adivasis and all other indigenous people follow environmentally sound practices such as shifting cultivation and agro forestry, which in corporate processes such as the recycling of this land. These traditional methods, evolved from the centuries of intelligent adjustment to local circumstances, depend on minimal disturbance of the ecology. Even slash and burn cultivation, described as primitive and naive contributes to preserve the soil, reducing pests and enhancing nutrients in the soil and helps to attain higher crops yields. "Conservation is built into tribal culture" says Prabhat Prabhu, "Whether it is forest spirits, totems, taboos that surround hunting or their agricultural practices".

According to B.D.Sharma who drafted the comprehensive set of guidelines in the 29th Report of the group. This issue cannot be resolved without a complete paradigm transformation. using surplus labour of the tribal people to improve degraded land makes eminent

economic issues. The process of including the most disposed and disenfranchised people in the country would naturally quell violent popular movements that threaten state legitimacy. The FCA, which is for claiming down on any change in forest patterns was a crisis driven response to large scale degradation of the environment. Instead of assuming a direct trade off between sustainable development and tribal rights, a rational and humane policy should realize that empowering indigenous communities to conserve their own livelihoods will contribute tremendously and environmental conservation.

d) Rights of the Dalits:

According to the Recent Report of National Commission for SCs/STs, (April, 90) during the period between 1981 and 1986, 4022 SC/STs were murdered i.e. the rate of murder exceeded one per day. In the same period, over one lakh (1,15,055) crimes against Dalits were registered under IPC. In addition, thousands of cases, were registered under the protection of Civil Rights (PCR) Act. The number of these posted crimes should not be small. Apart from this the Dalits in Indian countryside live under an extremely brutalised regime of oppression and hegemony of landed gentry. Those who consider the caste contradictions as the sole basis of authorities on Dalits, had failed to explain as to why the Dalits living below the poverty line are more vulnerable to attacks on them. Trapped in such a vicious cycle, of perceptions the state and society have failed to evolve any realistic approach to deal with the over continuing atrocities on Dalits.

The sources of crimes against Dalits are not same as in the case of general crimes. According to the report of Commission for SC/STs (April, 1990) the authorities against the Dalits originals from these reasons – land, alienation of tribal land, bonded labours, indebtness, wages, non responsive administrative machinery, unseasonable forest policy and caste division of society. The state perceives the autocritis

against the Dalits from the viewpoint of law and order. The state has never responded to the complex reasons of crimes against Dalits[18]. The social relationship and interaction among the citizens of this country are predonatively determined by the values of past. The values and ethos of the past continue to benefit the privileged section. While the state declares all such caste, privileges as punishable offence, the people who run the state machinery refuse to internalise the mottos India stand for. The term such as Democracy, Secularism and socialism are still alien concepts for them. The notion of justice, equality and liberty are perceived as threats to the states quote existence of priviledged classes. Judiciary though a different institute from state, could not judge this matters impartially. They can hardly punish the "Pure caste offenders". After the enactments of PAA of 89, Centre has directed to all states to establish special courts in every district to look after the problems of Dalits. In order to check the autocrities on the Dalits, special courts were set up in each District. The categories of certain offences are not clearly mentioned in protection of Civil Right or Indian Penal Code the prevention of Autocratis Act are more stringent than those under PCR or IPC. The Government is gradually mistaken it hopes to curb atrocities because of such changes. In a survey conducted by the National Commission for SC/STs (done in 1987 and published in 1990) about the annual income of 100 victims families of seven states ranging from North to South and western India, it was found that 41 victims fell in the annual income group with an upper limit of Rs. 3500 and only 13 feel in the annual income group of Rupees 10,000. In another survey, it is founded that so long as Dalits remain uneducated and depended on the landed gentry for their livelihood, it is obligatory for the legislative and the judicially to exercise a check on the offences done to the Dalits[19]. Government should also provide insurance facilities to the witnesses and their property. A panel of lawyers are to be arranged so

that should act impartially – without thinking of "priviledges" from the offenders. The strict disciplinary action of the police officers often neglected by the lawyers. The special courts must keep vigil over the performance of such officials who maintain law and order in the country.

C. LEGISLATIVE VS JUDICIARY

The constitution of India creates three organs of the state – the executive, legislature and the judiciary. All the three organs have definite role to play under the constitution. The legislative frames the laws, the executive enforces the laws and the judiciary interprets the laws. In theory, all the three organs act exclusively within the sphere allotted to them by constitution. However in actual practice, there is certain amount of overlapping in the fields of all the three organs of the state. The legislature while framing a law has to strictly abide by the provisions of the constitution and it cannot frame a law which is contrary to my provision of the constitution. The validity or otherwise of a law framed by the legislature can be considered by the judiciary can strike down such a law and thus the law is obliterated from the statute books[20]. On the other hand, if the judiciary finds the law to be valid, it upholds such a law and it is then enforced in terms of the interpretation placed on the law by the courts. The executive, when it enforced the law framed by the legislature, its actions are subjected to scrutiny by the Judiciary. The judiciary then checks the actions of the executive not only on the touchstone of the law sought to be enforced, but also on the touchstone of the constitution. The decisions of the courts are binding on both the legislature as well as the executive. There is no power, vested either with the legislative or the executive to ignore the decisions of the courts are bindings on both legislature as well as the executive. There is no power vested either with the legislature on the executive to ignore the decisions of the courts or to act contrary to such decisions. Any action of either the executive or

the legislative contrary to any decision of the courts would be liable to be struck down without any doubt. The judiciary under the constitution is above the executive and the legislative both. The framers of the Indian Constitution have created an independent judiciary only with a view that it would be free from executive and legislative interference knowing fully well that the judiciary would be able to perform the duties enjoined into it by the constitution if it is subject to executive and legislative interference. No organ of the government can claim any immunity from responsibility and liability towards the people of India. Thus the judiciary like executive and the legislature is ultimately responsible to the people of India.

The legislature, has never treated itself to be the subject to the judiciary. After the first enactment of 1951, the parliament has always tried to project itself above the judiciary. The origin of the constitution Act 1951 was the decision taken in the Madras High Court, in "Champakam Dorairajan Case"[21]. The Government order was challenged before the Madras High Court on the ground it violated Article 15(1) and 29(1) of the constitution.

The Supreme Court in Champakam Dorairajan upheld the judgement of Madras High Court. At about the same time in which the Madras High Court and the Supreme Court decided Champakan Dorairajan, the Patna High Court was considering the validity of the Bihar Land Reforms Act and in Kameswar Singh, AIR 1951[21], Patna 91, a Full Bench of the Patna High Court struck down the Bihar Land Reforms Act, as violating Article 14 and 31 of the constitution. The State of Bihar, challenged the judgement in appeal before the Supreme Court. The decisions of the Supreme Court in Champakam Doriarajan and the Patna High Court in Kameshwar Singh[22] led to the enactment of the Constitution (First Amendment Act). One of the objections raised before the Provisional Parliament which enacted the First Amendment was that the Bill amounted to override the judiciary.

So far as the interpretation of the constitution is concerned, Supreme Court is the higher court of the land to do it, it not only resolve the political conflict but also the political interpretation.

Late Pandit Nehru, tried to abolish the judicial supremacy, by the parliamentary supremacy. Judiciary cannot act as third chamber. To him, the constitution is the creation of Parliament. So Judiciary cannot stand above the Parliamentary sovereignty. According to the First constitutional amendment Act 1951 Article 31-A is inserted in the constitution according to which "Nothing withstanding anything in the foregoing provisions of this part, no law providing for the acquisition by the state of any estate or of any rights therein, or modification of any such rights shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by any provisions of this part. The constitution (First Amendment) Act inserted Ninth Schedule in the constitution. The Ninth schedule which started of with thirteen enactments as of today contains 284 enactments. All these enactments have been rendered immune from being challenged as violating any of the fundamental Rights. The judiciary cannot enact the Amendment so far been made in the Ninth schedule as it was not contrary to the basic structure of the constitution. In the First Constitutional Amendment Act the legislature for the first time has overrided the judiciary.

Article 141 of the constitution lays "that the Supreme Court is the final interpreter of the Constitution", it is bindings on the authority to abide by the decisions taken by the Supreme Court. Judicial review is a part of the basic structure of the constitution. Thus the Parliament cannot in any manner amend the constitution to avoid or curtail access to courts.

So far as the enforcement of reservation to concerned. It is always appropriate for the state to make quotas for nonminority and

minority unaided educational institutions, States would have no power to insist on seat sharing in the unaided private professional educational institution by fixing quota of seats between the management and the state. The state cannot insist on private educational institutions which receive no aid from the state to implement state's policy on reservation for granting admission on lesser percentage of marks i.e. on any criteria except merit. In the T.M.A. Pai Foundation Vs State of Karnataka[23] SCC, 481, a bench of Judges – have declared, that state is not allowed to regulate or control admissions in the unaided professional educational institutions, so as to compel then to give up share of available seats to the candidates chosen by the state. The Chief Minister of Tamil Nadu Jayalalita went to extent of demanding education to be restored to the state list (List-II of the seventh schedule of the constitution) and asked the Parliament to undo the anomalous situation created by the judgement – Supreme Court did not enact any comprehensive legislation on the subject created by the Parliament with regard to the "reservation quota" in the "unaided educational institution as well as the rulings on charging of fees by private educational institutions". Even the political leader of Tamil Nadu. S. Ramdas, called for legislation to ensure social justice, for the poor and the continuation of the Government quota in the unaided higher educational institutions. The Andhra Pradesh Cabinet took a decision to file a review petition before the Supreme Court. Members of Parliament from Tamil Nadu to enact a Central legislation on the subject[24] The left Parties also supported the Central government, also want the amendment of the constitution with regard to the "control of the educational system". There has been a serious controversy regarding the reservation for Dalits Christian in the jobs and educational institutions. Whatever may be reason the "confrontation attitude of the legislature against the judiciary is to be avoided, otherwise it would obstruct the progress of the nation. Since

the departments of the Government are legislature, executive and the judicial, they are to coordinate in degree to the extent of the powers delegated to each of them. Through each organ would exercise in its our sphere, and independent of each other, but they had to depend on each other for the smooth functioning of the Government and also for Nation's progress.

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Abbreviations:

1. FCA – Forest Conservation Act.
2. MoEF – Ministry of Environment Forest.
3. FIR- First Information Report.
4. O.B.C. – Other Backward Classes.
5. NCBC – National Commission and Backward Classes.
6. S.A.L. – Social Action Litigation.
7. PIL – Public Interest Litigation.
8. SEBC – Socially and Educationally Backward Classes.