Domestic Application of Human Rights Norms

by

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This is the fourth in the series of Judicial Colloquia which are being organised by the members of the judiciary throughout the Commonwealth under the sponsorship of Inter-rights with the assistance of the Legal Division of the Commonwealth Secretariat. The first was convened by me in Bangalore, India where predominantly South Asian and South East Asian Judges of Superior Courts met in order to discuss the topic "Domestic Application of International Human Rights Norms". A number of principles were adopted at the Bangalore Colloquium concerning the role of the judiciary in advancing human rights by reference to international human rights norms. These principles have come to be known as the Bangalore principles and they have inspired a good number of judges in the Commonwealth to develop human rights jurisprudence in conformity with the International Human Rights Norms. When the Bangalore principles were formulated, the participants included high judicial officers not only from the Commonwealth countries of South Asia and South East Asia but also from Australia, Pakistan, United Kingdom and the United States of America. The meeting was not an exclusively Commonwealth affair as there were Judges from Pakistan and United States of America who participated in the colloquium.

Thereafter a second judicial colloquium was held in Harare where Chief Justices and Judges from Commonwealth Africa participated. I also had the privilege of participating in the colloquium and at the end of the deliberations, we came out with the Harare Declaration of Human Rights. I understand that thereafter a third judicial colloquium was held in Banjul some time in 1990 and though I did not have the privilege of participating in that colloquium, the proceedings of that colloquium when printed were sent to me by the Legal Division of the Commonwealth Secretariat.

I am glad that this wonderful work of familiarising the judges of the Superior Courts with the norms of the international human rights law so that they can endeavour, so far as possible, to bring their decisions into conformity with such norms, which began in Bangalore, is now being systematically carried forward to different parts of the Commonwealth. The Judges in the Commonwealth countries are all united by the bond of common law. The Judges administering the common law have a considerable margin of choice in the decisions which they have to make and that explains how the common law has developed and grown over the years by responding to the changing needs and requirements of the Society. We have all inherited the common law tradition and we are trying to build our own national jurisprudence on the solid foundations of the common law tradition. We have taken common law as the base and with the emerging national consciousness and the growing realisation that law is not a theoretical abstraction but a dynamic instrument in the hands of the Society to meet the needs and satisfy the wants and desires of the people, it has become

necessary to adapt the common law and each of the countries to which we belong is trying in its own way to grapple with the problem of adaptation. In fact the problem of adaptation is a general problem applicable in case of all normative systems and the necessary adaptation is carried out not only by legislative intervention which is sometimes slow and tardy but also through the judicial process. The judiciary has an important role to play in adapting the common law so as to bring it in harmony with the International Rights Norms.

The same responsibility rests on the judges while interpreting their national constitution which embodies, in most of the countries, basic human rights. You will forgive me if I dwell a little on the significance of human rights in so far as the Judicial function is concerned. The basic theme in the discourse of human rights to which we in the judiciary must address ourselves is how we can convert the rhetoric of human rights into reality. The rhetoric of human rights draws on the moral resources of our belief in the significance of an underlying common humanity and points in the direction of a type of society which ensures that the basic human needs and reasonable aspirations of all its members are effectively realised in, and protected by law. Human rights discourse can therefore serve both as a potent source for radical critiques of actual social arrangements and also as a powerful basis for working out and presenting alternative institutional practices. The language of human rights carries great rhetorical force of uncertain practical significance. At the level of rhetoric, human rights have an image which is both morally compelling and attractively uncompromising. But what is necessary is that the highly general statements of human rights which ideally use the language of universality, inalienability and indefeasibility should be transferred into more particular formulations, if the rhetoric of human rights is to have major impact on the resolution of social and economic problems. The meaning and scope of each right has to be clarified, the content and location of any co-relative duties to which it gives rise must be spelt out and the permissible range of exceptions and limitations specified. Whether this work is done by the framers of the Constitution or by the ordinary law making procedures or by the activities of the judicial organs, it may be regarded as particularisation or positivization of human rights through law. The most obvious forms in which this is usually done is through specific constitutional provisions which incorporate a statement or bill of rights which are given the status of fundamental law. These rights are then regarded as superior to ordinary legislation and are used to render invalid any legislative action or administrative or other governmental decisions which are held to run counter to the enumerated rights. Institutionally this invalidation is normally achieved through the medium of courts whose task it is to rule on the constitutionality of ordinary legislation as also executive action and to determine whether the fundamental rights of the citizen have been infringed in particular cases. This model which had its origin in the United States has been adopted with variations in most of the countries which attained independence after the Universal Declaration of Human Rights was adopted on 10th December 1948 and recently it has been incorporated also as part of the Canadian Constitution. This mechanism gives major power in positivizing

human rights to courts, since the type of decision to be made in applying highly general statements of rights to specific circumstances results in effect and substance, in creating detailed formulations which are applicable in the particular circumstances of each case. This mechanism has the advantage that there is an institutional avenue for challenging violations of human rights by Governments though it is open to the charge that it is undemocratic. It is perhaps for reasons of democracy and accountability that the protection of human rights is left to elected legislative bodies like Parliament in the United Kingdom where courts are in effect limited to the determination of whether the executive organs of Government have acted within the law. However, this apparently more democratic process leaves human rights vulnerable to the decisions of bodies which have much more on their collective minds than the protection of human rights and are subject to majoritarian populist pressures and reasons of state which so often lead to human rights violations. It is, therefore, believed in many jurisdictions such as the United States, Canada and most of the countries which have followed the American model, that the special function of human rights in placing limits on State action cannot be left safely in the hands of the legislatures or the ordinary processes of law. It is the firm conviction of the people of these countries that the best mechanism for positivizing human rights and realising human rights through law is through the enactment of basic or fundamental rights in the Constitution and entrusting constitutional courts with the power and duty to interpret and enforce these human rights. It is to my mind not an effective answer to the acceptance of this mechanism that it is anti-majoritarian, because it is precisely in order to protect the individual or minority group against majoritarian excess, that fundamental rights have been found necessary to be provided in the Constitution and moreover, while it is true the judges who are called upon to interpret the scope and applicability of the fundamental rights are not elected by the people, they are still accountable to the people, for their constituency is not a geographical sector of the country or a section of the people but the entire people themselves and they are expected to be judicial statesmen - visionary architects in tune with the constitutional values and not just masons piling up one brick upon another in shaping a judicial decision.

It is necessary to point out that there are certain human rights which operate as a restraint on the power of the State and such restraint is necessary because of the possibility of abuse and misuse of power by the State which is inherent in the legitimate possession of the monopoly of force within a society and equally there are certain other human rights which require affirmative action to be taken by the State, particularly in cases where the realisation of a given human right requires to be facilitated by State action. It would not therefore be incorrect to observe that the State is the necessary friend as well as the recurrent enemy of human rights. It would be no exaggeration to state that human rights would remain safe in a society governed by a written Constitution so long as its judges are strong and independent, do not cave in to pressures or influences of centres of power and are committed to the cause of human rights. The judiciary has to be ever alert to repel all attacks, gross or subtle, against

human rights and they have to guard against the danger of allowing themselves to be persuaded to attenuate or constrict human rights out of misconceived concern for State interest or concealed political preference or sometimes ambition or weakness or blandishments or fear of executive reaction. Judicial somnambulance, indifference or timidity can be the source of greater threat to human rights enforcement than the aggression of the violators, for the greatest bulwark against State authoritarianism or arbitrariness would then be gone.

It would be useful at this stage to consider the nature of the judicial function because without a proper understanding of it, it will not be possible to appreciate the creative role that the judiciary can play in evolving human rights jurisprudence either through adaptation of common law or through interpretation of the Bill of Rights in the national Constitution.

Aristotle believed that the Government should be of laws and not of men, because he said "law is reason free from desire and passion perverts rulers even though they be the best of men." Plato on the other hand believed in the philosopher king who would do justice to every one according to his need. Almost all countries have adopted the Aristotelian ideal of Government of laws and not of men but it is obvious that the generalities of law falter before the specifics of life and moreover laws cannot operate automatically; they are not self-speaking, self-applying and self-executing. Thus, though our ideal is Government of laws and not of men, we cannot eliminate men from law. Law has to be interpreted in view of the imperfections of the human language and the inherent impossibility of encompassing the complex reality within the neat and logical framework of law and law has to be applied to the endless diversity of human situations. This task is assigned to the judge under our system of jurisprudence. The result is that though we banish the philosopher King from our democratic realm, we bring him back in the form of a Judge. It is for the Judge to discover what the law is in a given situation and to apply it with a view to doing justice between the parties. Now in this process of discovering law and interpreting and applying it, the Judge performs a highly creative function and he really makes the law. It is vehemently asserted by Anglo-Saxon lawyers that judges do not make or change the law but merely apply it. Law is there existing and imminent and they merely find it. They no more make or invent law than Columbus made or invented America. Law-making function belongs to the legislature and the judges merely reflect what the legislature has said. This formalist theory which I sometimes describe as the phonographic theory of the judicial function, does not in my opinion represent a correct view of the judicial function. It hides the real nature of the judicial process. It has been deliberately constructed in order to insulate judges against vulnerability to public criticism and to preserve their image of neutrality. It is regarded as necessary for enhancing their credibility. It also serves an important social function. While the law is presented and accepted as impersonal, objective, logical scientific timeless and gapless system, the judges can, without provoking controversy, impose their own principles and policies to resolve complex social problems which the legislature has not considered. This theory also helps judges to escape accountability for what they

decide, because they can always plead helplessness even if the law they declare is unjust, by saying that it is the law made by the legislature and they have no choice but to give effect to it. It is only natural that judges should wish to exercise power and yet not be accountable to anyone for such exercise. It is natural for them too to indulge in the fiction that they are merely carrying out the intention of the legislature or discovering the immanent something called the law. The tradition of law and the craft of jurisprudence offer such judges plenty of dignified exits from the agony of self-conscious wielding of power. Yet there can be no doubt that judges do take part in the law making process. It was Sir Frederick Pollock who said "No intelligent lawyer would in this day pretend that the decisions of the Court do not add to and alter the law." You have merely to look at the decisions of the Supreme Courts of various countries in order to realise how the Supreme Courts have been continuously making and changing the law. Law making is an inherent and inevitable part of the judicial process. Even when a judge is concerned with interpretation of a Bill of Rights or a statute, there is ample scope for him to develop and mould the law. He it is who infuses life and blood into the dry skeleton painted by the legislature and creates a living organism appropriate and adequate to meet the needs of the Society and by thus making and moulding the law, he takes part in the work of creation and this is much more true in the case of interpretation of the constitution as I shall presently show. Greatness on the Bench lies in creativity and it is only through bold and imaginative interpretation that the law can be moulded and developed and human rights advanced. It does not matter that in this process of creation a Judge makes what conservative and staid judges might describe as "mistake". As pointed out by Mr Justice Holmes, "A Judge who is not prepared to make mistakes will never make anything. Such a Judge may be regarded as sound and safe in his own times but he will not leave any impact on the law". C K Allen also says "Our legal history shows that all our greatest Judges have been those of the more adventurous type, whatever error they may have committed and howsoever much criticism they may have incurred. Those who have insisted merely on standing super anti quas vias have usually stood nowhere at all and have soon been forgotten."

Now once it is conceded that the judicial function is a creative function and that the judges do make law in the process of interpretation, a heavy responsibility immediately falls on the shoulders of the judges in discharging the judicial function particularly in relation to enforcement of human rights. The approach of the judiciary in the interpretation of human rights should be creative and purposive and the judiciary must adopt an activist goal oriented approach in the interpretation of the fundamental rights embodied in the Bill of Rights or in statutory legislation. The Judges must boldly interpret the charter of human rights enshrined in the Constitution and take into account international human rights norms embodied in the two international instruments for expanding the reach and ambit of the human rights. There is considerable scope for creativity for a judge if only he is dedicated to the cause of human rights and is prepared to advance human rights jurisprudence by a process of judicial interpretation. That is why Jackson J said in the U.S. that "The Constitution is what we say it is." The judges can and must so

interpret the Constitutional guarantees so as to expand their meaning and content and widen their reach and ambit. That is what the Indian judiciary has done in the last few years by adopting a creative and purposive approach. The Indian judiciary has adopted an activist goal oriented approach and expanded the frontiers of fundamental rights. It has through judicial activism found a new historical basis for the legitimation of judicial power and acquired a new credibility with the people. This is an approach which must be adopted by the judiciary in the Third World, if human rights are to become meaningful and effective. When the judiciary interprets the words of the charter of human rights embodied in the Constitution in a creative and goal-oriented manner, it is not defying the words used in the Constitution nor is it going contrary to the constitutional mandate but it is merely interpreting the Constitution - giving meaning to it - which is its legitimate function. The judiciary therefore, can and must internalise human rights norms embodied in the various international instruments adopted by the United Nations and its allied organs such as I.L.O. Even if the judiciary finds that a particular human rights instrument has not been ratified by its country, it must have regard to the human rights embodied in such instrument because these human rights represent norms accepted by the entire international community. We in India have done it in a fairly large measure through judicial creativity and activism. I shall give you some examples of the way in which this has been done by the Indian judiciary. I do not wish to suggest that the other countries have not done so, but it is only because I am familiar with the Indian experience that I am giving examples from India.

The judiciary in India has expanded the frontiers of fundamental rights and in the process re-written some parts of the constitution through a variety of techniques of judicial activism. Now when I talk of judicial activism I mean not merely technical activism where judges declare the breadth of their power and are willing to exercise such power, nor do I mean juristic activism which is concerned not with just appropriation of increased power but is concerned with the creation of new concepts, irrespective of the purpose which they serve. I refer to what I would call social activism or human rights activism, where techniques of judicial activism are employed for the achievement of certain definite objectives such as distributive justice or realisation of basic human rights. It is this social or human rights activism which has invested the Supreme Court of India with a high socio-political visibility and provided a new credibility to it.

I propose now to give a few examples of the manner in which the judiciary in India has tried to give effect to human rights norms embodied in the two international Covenants. The Covenant on Civil and Political Rights provides that persons awaiting trial should be released subject to guarantees to appear for trial and Article 28 of the Principles of Equality in the Administration of Justice lays down that "national laws concerning provisional release from custody pending or during trial shall be so framed as to eliminate any requirement of pecuniary guarantees" and so also Article 16 Clause (2) of the Principles of Freedom from Arbitrary Arrest and Detention provides that "to ensure that no person shall be denied the possibility of obtaining provisional

release on account of lack of means, other forms of provisional release than upon financial security shall be provided". These human rights norms have been incorporated in the domestic law of India by a process of judicial interpretation. The Indian Constitution has Article 21 which says that "No person shall be deprived of his life or personal liberty except by procedure established by law". The view was held by the Supreme Court of India for a long time that this Article merely embodied the Dicyian concept of the rule of law, namely , that no one can be deprived of his life or personal liberty by the Executive without the authority of law. It was enough so long as there was some law authorising such deprivation and it did not matter what was the nature or character of such law. But in the decision in Maneka Gandhi's case which marks a watershed in the history of Constitutional law in India, the Supreme Court of India held that it is not sufficient merely to have a law in order to authorise constitutional deprivation of life and personal liberty but such law must prescribe a procedure and such procedure must be reasonable, fair and just. The Supreme Court of India thus by a process of judicial interpretation brought in the procedural due process concept of the American Constitution, though the original intent of framers of the Constitution was to exclude the due process clause. The Supreme Court of India then proceeded to hold that insistance on monetary bail in case of a poor accused should be inconsistent with reasonable, fair and just procedure and it would be violative of the constitutional guarantee under Article 21. The view was taken for the first time that more liberal norms consistent with human rights should be adopted, on which accused persons may be allowed to remain at liberty pending trial. It was observed by the Supreme Court that the risk of monetary loss is not the only deterrent against fleeing from justice but there are other factors which act as equal deterrents against fleeing. The entire law of bail was humanised by judicial interpretation of Article 21 and the Supreme Court of India held that a new insight should inform the judicial approach in the matter of pre-trial release and if the Court is satisfied after taking into account, on the basis of information placed before it, that the accused has his roots in the community and is not likely to abscond, it need not insist on monetary bail and may safely release the accused on his personal bond. The human rights norm set out in the international instruments was thus translated into national practice.

The Supreme Court of India also in the same case adopted an activist approach and took positive steps in the direction of implementing Article 14 Clause (3) of the International Covenant on Civil and Political Rights which lays down that everyone shall be entitled in the determination of any criminal charge against him "to be tried without undue delay" and Article 16 of the Principles of Equality in the Administration of Justice which reiterates that every one shall be guaranteed in the examination of any criminal charge against him, the right to prompt and speedy hearing. The Supreme Court of India held that the right to a reasonably expeditious trial is an integral and essential part of reasonable, fair and just procedure in case of an accused who is in jeopardy of his life or personal liberty and that it is therefore implicit in the fundamental right to life and personal liberty enshrined in Article 21 and the State is accordingly

under a constitutional mandate to do whatever is necessary to ensure expeditious investigation and speedy trial. The Supreme Court of India for the first time read the fundamental rights as imposing an affirmative obligation on the State instead of merely reading them as negative restraints on the power of the State. The Supreme Court of India, in another case following upon this view, held that so far as juveniles are concerned, the criminal trial against them must be completed within a period of two years at the outside and if it is not so completed, the criminal prosecution must be quashed. The Supreme Court of India thus not only gave effect to the right to speedy trial enshrined in the International Instruments but also gave effect to the right of an accused to expeditious disposal of any criminal proceedings against him.

Nationally and internationally access to justice has now been recognised as one of the most important basic human rights without which it is not possible to realise many of the human rights, whether they be civil and political or social and economic. There is in fact considerable literature on access to justice as a human right. The Constitution of India included an amendment made in 1976 Article 39A in the Directive Principles of State Policy with a view to ensuring equal access to justice to the people, irrespective of their caste, creed or resources. But this Directive principle was not being implemented by the State and the Supreme Court of India found that the State was dragging its feet in enforcing this basic human right and that large masses of people in the country who were leading a life of want and destitution were, on account of lack of awareness, assertiveness and availability of machinery, priced out of the legal system and were denied access to justice. The Supreme Court of India accordingly, in Hooseinure Khtoon's case, held that in a criminal case which imperils the life or personal liberty of an accused, if the accused is, on account of his poverty or ignorance or socially or economically disadvantaged position, unable to afford legal representation, it would be violative of Article 21 of the Constitution to proceed to try him without giving him proper and adequate legal representation. The Supreme Court of India took the view that providing proper and legal representation to a poor accused in a criminal trial is implicit as a fundamental right in Article 21 of the Constitution. The Supreme Court of India in keeping with its newly found role of protector and promoter of human rights, directed the State to provide free legal assistance to a poor accused in a criminal trial, through creative judicial interpretation of Article 21. When the State pleaded lack of adequate funds to finance the legal aid programme, the Court pointed out that poverty is no defence for failure to enforce a fundamental right. The Court thus spelt out the right to legal aid in a criminal proceeding from the language of Article 21 and evolved an affirmative obligation on the State to provide legal assistance. The Supreme Court of India also held in a subsequent case that if the Magistrate does not inform the accused that he is entitled to free legal assistance or the accused is not provided such free legal assistance in a criminal trial, the conviction would be liable to be set aside.

The Judiciary in India had also occasion to interpret the expression "right of life" and in a seminal decision, the Supreme Court

held that life does not mean merely physical existence but it also includes the use of every limb or faculty through which life is enjoyed and there is also implicit in it the right to live with basic human dignity because without basic human dignity life would not be worth living. The right to live with basic human dignity was thus spelt out by the Court from the language of Article 21 and it was held to comprise the basic necessities of life. The State could, on the words of Article 21, deprive a person of the right to live with basic human dignity by a law which prescribes reasonable fair and just procedure but the Court held that no procedure which deprives a person of the right to live with basic human dignity can ever be reasonable, fair and just and therefore the State is prohibited from acting in a manner which would tread upon the basic human dignity of the individual. The right to live with basic human dignity was thus elevated to the status of a fundamental right which cannot be abridged, defeated or taken away by the State and this was achieved through a process of judicial interpretation.

I may also refer to Article 7 of the Covenant on Civil and Political Rights which provides that no one shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment. This human right does not find a place in the Indian Constitution which was framed in 1948-1950. Again the Supreme Court had to fill up the void and bring the Bill of Rights into conformity with the International norm set out in Article 7. The Supreme Court therefore held in Francis Cratie Mulleni's case that the right to live with basic human dignity implicit in the right to life guaranteed under Article 21 included the right not to be subjected to torture or to cruel, inhuman or degrading punishment or treatment. This all-important right was therefore read by the Supreme Court into the right to life and made part of domestic jurisprudence. Taking this right of protection against torture or cruel, inhuman or degrading punishment or treatment, as the base, the Supreme Court proceeded to hold that public hanging was violative of the right to life and hence prohibited under the Indian Constitution. In a dissenting judgement I also condemned the death penalty as cruel, inhuman or degrading punishment and therefore violative of the right to life. But my dissent was a lone dissent, the other four judges taking the view that the death penalty was constitutional.

The human right embodied in Article 11 of the Covenant on Civil and Political Rights was also incorporated as part of domestic jurisprudence by judicial intervention. This article provides that no one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation. The Supreme Court read it as protection against arbitrary and irrational interference with the right to personal liberty and hence a guarantee implicit in Article 21 of the Indian Constitution.

The Supreme Court also incorporated as part of domestic jurisprudence the right to seek and receive information guaranteed under clause 2 of Article 19 of the Covenant on Civil and Political Rights. The right is not a specifically enumerated right in the Bill of Rights under the Indian Constitution but it was spelt out as a right implicit in the right of free speech and expression enshrined in Article 19(1) (a) of the Indian Constitution.

This was done by the Supreme Court in the famous Judge's Appointment case.

Let me now give a few examples of the way in which the judiciary in India has internalised the rights embodied in the Covenant on Economic and Social Rights. But before I do so, I may refer to one instance in which an ILO Convention was used by the Supreme Court for granting relief to tribes who were being displaced by the construction of a large dam, without any adequate provision being made for their rehabilitation. Now there was no legislation which required the Government to rehabilitate the displaced tribes. The only obligation of the Government under the law was to pay to those tribes who owned land and whose land would be submerged by the construction of the dam, market value of such land by way of compensation. The payment of a lump-sum representing the market value of the land would hardly provide adequate means of subsistence to the displaced tribes. The Supreme Court had therefore to innovate and for this purpose the Supreme Court relied on Convention 107 of ILO which provided inter alia that tribes who are being displaced must be provided alternative land of equal quality or other suitable employment, the object being that they should have means of subsistence. This Convention was ratified by India but it had not been made part of the domestic law by legislation. The Supreme Court incorporated it in the domestic law through a process of judicial interpre-tation. The Supreme Court took the view that the right to life guaranteed to the tribes under Article 21 of the Indian Constitution included the right to live with basic human dignity and not to be deprived of their means of subsistence and hence it also comprised the right under Convention 107 and hence the tribes could not be displaced by the Government unless they were given alternative land or suitable employment and until this was done, the Government must go on paying minimum wages to them.

Turning now to economic and social rights, there are a few rights in the Covenant on Economic and Social Rights to which I would like to refer and which we have tried to enforce by incorporating them in our domestic jurisprudence. Article 7 provides, inter alia, that everyone shall have the right to the enjoyment of just and favourable conditions of work which ensure amongst other things, safe and healthy working conditions. The right embodied in this Article is, on the plain terms of Article 2 of the Covenant, not enforceable in a Court of law and under the Indian Constitution also, it is part of the Directive Principles of State Policy and hence not justifiable in a Court of law. The question was how to internalise it in our domestic jurisprudence. A case came before the Supreme Court by way of social action litigation complaining that a large number of workers employed in stone quarries near Delhi are working under abnormal conditions. They do not have clean, healthy drinking water: they have no medical help - no medical services: they do not have any schools with the result that their children are going without education and the stone crushers in which the quarried stone is being crushed, emit a lot of dust which is affecting the lungs of the workers. There was clear violation of the right embodied in Article 7 of the Covenant. The Supreme Court held that this right was a part of the right to live with basic human dignity which was implicit in the right to life and hence it was enforceable

under Article 21 of the Indian Constitution. The Supreme Court accordingly gave a direction to the Government that the workers must be supplied clean and healthy drinking water, a mobile medical van must visit them once in a week, provision must be made for taking the children of the workers to school and the stone crushers must be fitted with devices which would prevent emission of dust.

Then there is Article 21 of the Covenant on Economic and Social and Cultural Rights which provides that everyone shall have the right to the enjoyment of the highest attainable standard of physical and mental health and one of the steps required to be taken to this end shall be the "improvement of all aspects of environmental and industrial hygiene". But the right to a clean and healthy environment is not a specifically enumerated right in the Bill of Rights under the Indian Constitution. The Supreme Court of India however held in a decision, with a view to incorporating this right set out in Article 12 of the Covenant in the domestic jurisprudence, that the right to a clean and healthy environment is implicit in the right to life, because life would be seriously imperilled if the environment is not clean and healthy environment must be taken to be part of the right to life guaranteed under Article 21 of the Indian Constitution. The Supreme Court thus elevated the right to a clean and healthy environment to the status of a fundamental right which could be enforced by the courts, even if there was no legislation on the subject. Thus conformity with Article 12 of the Covenant was ensured through judicial interpretation.

These are only some of the examples which I have tried to place before you. They exemplify the crucial role which the judiciary can play in advancement of human rights provided the judges are committed to the cause of human rights and are not timorous souls and they have the requisite judicial craftsmanship to mould and shape the provisions of the Constitution and the law so as to bring them into accord with the international human rights norms. It is a daunting task which calls for a high degree of creative skill and statesmanship from the judiciary, but however daunting such task, we judges must rise to the challenge of making human rights a reality and not just an aspiration. In the words of Don Quixote's heroine, Dulcina: "You have shown me the skies, but what good are the skies to a creature who will never do better than crawl". While man's reach should indeed exceed his grasp, we need to both reach and grasp and play a determined and prophetic role in making international human rights a reality for all.