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Liberty and Security of the Person in India, with Particular Emphasis on Access to Courts

Hon Mr Justice P.N. Bhagwati

I am deeply grateful to Interights for inviting me to this Judicial Colloquium on the Domestic Application of International Human Rights Norms. This Judicial Colloquium is one in a series which have been held from time to time in different parts of the Commonwealth under the co-sponsorship of Commonwealth Secretariat and Interights. The first was convened by me in 1988 in Bangalore (India) where predominantly South Asian and South East Asian judges of superior courts met in order to discuss the topic of how international human rights norms can be incorporated in domestic jurisprudence. The Bangalore Colloquium adopted a number of principles 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 their national human rights jurisprudence in conformity with international human rights norms.

When the Bangalore Principles were formulated, it was found that many of the judges in the Commonwealth countries following the common law system were not familiar with the human rights norms enunciated in the international human rights instruments, and it was therefore felt that similar judicial colloquia should be held also in other parts of the Commonwealth. Consequently the Bangalore Judicial Colloquium was followed by judicial colloquia in Harare, Banjul, Abuja, Oxford and, lastly, Bloemfontein in South Africa, where the Bangalore Principles were affirmed, reaffirmed, explained and elaborated. The Caribbean region was left out and I am, therefore, very glad that this Judicial Colloquium is being held on the initiative of Commonwealth Secretariat and Interights for the judges of the Caribbean region.

The topic which has been assigned to me is "liberty and security of the person in India, with particular emphasis on access to courts". I am going to speak on this subject, with particular reference to the human rights standards or norms embodied in the International Covenant on Civil and Political Rights (ICCPR). But before I deal with the specifics of the topic, let me make a few observations in regard to the role that the judiciary in India has played in expanding and protecting liberty and security of the person, and then describe

how, through innovative strategies, the judiciary has opened the doors of the courts to poor and disadvantaged groups of persons who have been denied liberty and security by the state and its agencies.

The judiciary has to administer justice according to law. But the law must be one which commands legitimacy with the people, and legitimacy of the law would depend upon whether it accords justice. The concept of justice has no universally accepted definition. It has meant different things to different people, in different societies, at different times. It is, therefore, necessary to have a standard of values, especially of justice, against which a law can be measured. Such a standard must necessarily be superior to the law itself and would, therefore, constitute the highest rank in the legal hierarchy.

There was a time when the standard of divine law as revealed by God to men in some holy scriptures was widely applied and served to confer legitimacy upon laws enacted by rulers. But over the years, religion as a standard of values began to lose its vitality and significance. Morality, though undoubtedly important and certainly complementary, was also found unable to solve the complicated problems of modern society and to provide a standard of reference by which to judge the laws enacted by rulers. Some other ground had to be found to support a standard against which to judge the ruler's laws.

This ground was provided by the concept of human rights, which for the first time found its formulation conceptually in the Declaration of Independence and the Bill of Rights in America, and the *Déclaration des droits de l'homme et du citoyen* in France. The principles set out in these two great documents may be summarized as follows:

1. The principle of universal inherence: every human being has certain rights, capable of being enumerated and defined, which are not conferred on him by any ruler, nor earned or acquired by purchase, but which inhere in him by virtue of his humanity alone.

2. The principle of inalienability: no human being can be deprived of any of those rights, by the act of any ruler or even by his own act.

3. The rule of law: where rights conflict with each other, the conflicts must be resolved by the consistent, independent and impartial application of just laws in accordance with just procedures.

The catalogue of rights listed in these two documents all took the form of freedoms, and in order to put them into effect, the United States and the new French Republic used the method of a written constitution. This method has been followed by most of the countries of the Commonwealth which have entrenched basic human rights in their constitutions.

The question remains, however, as to what are the human rights which need to be entrenched and which should govern the actions of the executive and the legislature or, in other words, what are the normative standards or values by reference to which the actions

of the executive and the legislature must be judged. These normative standards or values are to be found in the international human rights instruments which represent the basic values of justice according to the perception of the world community, and it is therefore essential that the standards or norms set out in the international human rights instruments should be taken into account by the judges while developing the common law or interpreting the constitution or statutory law.

It should be possible for the judges to do so, because there is sufficient scope for creativity on the part of a judge even when he is interpreting the constitution or a statute. It is no doubt true that judges have to interpret the constitution and the law according to the words in which the constitution or the law is couched, but as pointed out by Justice Holmes: "A word is not a crystal, transparent and unchanged, it is the skein of a living thought and may vary greatly in colour and content according to the circumstances and the time in which it is used". It is for the judge to give meaning to what the legislature has said, and it is this process of interpretation which constitutes the most creative and thrilling function of the judge.

Plato posed the problem two thousand years ago: is it more advantageous to be subject to the best men or the best laws? He answered it by saying that laws are by definition general rules, and generality falters before the complexities of life. Laws' generality and rigidity are at best a makeshift far inferior to the discretion of the philosopher king whose pure wisdom would render real justice, by giving each man his due. Aristotle, however, was in favour of the rule of law. He said: "He who bids the law rule bids God and reason rule; but he who bids man rule adds an element of the beast, for desire is a wild beast and passion perverts the minds of rulers even though they be the best of men." The law is "reason unaffected by desire". It is "intelligence without passion" - the accumulated wisdom of the ages.

Yet Aristotle knew with Plato that law cannot anticipate the endless combinations and permutations of circumstance and situation. There is bound to be a gap between the generality of law and the specifics of life. This gap in our system of administration of justice is filled by the judge, and in entrusting this task to the judge, we have synthesized the wisdom of Plato and the wisdom of Aristotle. It is here that the judge takes part in the process of law-making - what Justice Holmes called "interstitial legislation". Law-making is an inherent and inevitable part of the judicial process. Even where a judge is concerned with interpretation of a statute, there is ample scope for him to develop and mould the law. A judge is not a mimic. Greatness on the bench lies in creativity. Judging is a phase of a never-ending movement and something more is expected of a judge than imitative reproduction, the lifeless repetition of a mechanical routine.

Where the language of the law is clear, then, of course, the judge must give effect to it, but there are many cases where it is possible to decide either way, and it is here that the choice of values has to be made by the judge. Where the law and its application are alike plain, or where the rule of law is certain and the application alone is doubtful, there will be no difficulty for the judge. But there are cases where a decision one way or other will count for

the future, will advance or retard, sometimes much, sometimes little, the development of the law in the proper direction, and it is in these types of cases where the judge has to leap in the heart of legal darkness, where the lamps of precedent and common law principles flicker and fade, that the judge gets an opportunity to mould the law and to give it a shape and direction. It is for this reason that, when a law comes before a judge, he has to invest it with meaning and content, and in this process of interpretation the judge must remember that he has to do justice according to the international human rights standards or norms to the extent he can, without doing violence to the language of the law including the constitution.

The judges have a creative function, and a heavy responsibility rests upon them so far as concerns the discharge of the judicial function. They cannot afford to just mechanically follow the rules laid down by the legislature; they must so interpret as to reconcile the rules to the wider objectives of justice which are encapsulated in the international human rights instruments. It is axiomatic that, although different countries in the Commonwealth may have different political structures and different expectations of the people, there must always be a common denominator which must inspire the judicial tradition to correlate constitutional and legal interpretation to basic human rights, in order to ensure basic human dignity and fundamental human freedoms which find their place in the international human rights instruments. This has been done in ample measure by the judiciary in India in developing human rights jurisprudence with regard to the liberty and security of the person with particular emphasis on access to courts.

I may in this connection refer to what has been said in luminous words by the Supreme Court of the United States in *Weems v US*:[1]

> "Legislation, both statutory and constitutional, is enacted, it is true, from an experience of evils but its general language should not, therefore, be necessarily confined to the form that evil had theretofore taken. Time works changes, brings into existence new conditions and purposes. Therefore, a principle, to be vital, must be capable of wider application than the mischief which gave it birth. This is peculiarly true of constitutions. They are not ephemeral enactments, designed to meet passing occasions. They are, to use the words of Chief Justice Marshall, 'designed to approach immortality as nearly as human institutions can approach it'. The future is their care, and provision for events of good and bad tendencies of which no prophecy can be made. In the application of a constitution, therefore, our contemplation cannot be only of what has been, but of what may be. Under any other rule a constitution would indeed be as easy of application as it would be deficient in efficacy and power. Its general principles would have little value, and be converted by precedent into impotent and lifeless formulas. Rights declared in words might be lost in reality. And this has been recognized. The meaning and vitality of the Constitution have developed against narrow and restrictive construction."

1 54 L Ed 801 (1909); 217 US 349 (1910).

It is this principle of interpretation which has been applied by the Supreme Court of India in leading cases relating to liberty and security of the person under the Constitution of India.

Interpreting the Constitution in light of international human rights norms

One of the most remarkable examples illustrating how the reach and ambit of the fundamental rights guaranteeing liberty and security of the person enumerated in the Constitution have been expanded by the judiciary so as to accord with international human rights norms is furnished by the interpretation placed on Article 21 of the Indian Constitution by the Supreme Court of India in the light of the human rights norms embodied in the International Covenant on Civil and Political Rights.

Article 21 is in the following terms:

> "No one shall be deprived of his life or personal liberty except by procedure established by law."

When this article was being debated in the Constituent Assembly, the original draft provided that no one shall be deprived of his life or personal liberty except by ***due process of law***. When our constitutional adviser went to the United States to consult with the American jurists, he was advised by Mr Justice Frankfurter not to introduce the due process clause in the Indian Constitution, because that might give a very large power to the judiciary to interfere with the decisions of the executive and the legislature. Therefore, when we in India came to enact our Constitution, we changed the phraseology of Article 21, and in its revised version as finally enacted, it ran in the form which I have given above.

For a long time, the Supreme Court of India had interpreted Article 21 in a narrow and doctrinaire manner, as providing that no one can be deprived of his life or personal liberty except when such action is backed by the authority of law, whatever be the character of the law. But then the Supreme Court of India held in the *Maneka Gandhi*[2] case that it is not enough that there is law, but the law must provide a fair, reasonable and just procedure before a person can be deprived of life or personal liberty. This was the starting point of human rights jurisprudence in India.

The Constitution of India did not contain any provision for legal aid to a poor and indigent accused, although it is an essential requirement of fair trial as envisaged under Article 14 of the ICCPR. This deficiency had to be made good by the judiciary if the international human rights norm set out in Article 14 was to become part of domestic jurisprudence. The Supreme Court adopted a highly goal-oriented approach and, by a process of creative interpretation, held in two leading decisions, one in *Hoscot's*[3] case and the other in *Hussainara Khatoon's*[4] case, that a procedure prescribed by law for depriving a person of his life or liberty cannot be regarded as reasonable, fair and just if it does not provide for grant

2 *Maneka Gandhi v Union of India*, [1978] 2 SCR 621.

3 *Hoscot v State of Maharashtra*, [1979] 1 SCR 192.

4 *Hussainara Khatoon v State of Bihar*, [1979] 3 SCR 532.

of legal aid to a poor accused when his life or liberty is in jeopardy.

Thus legal aid to a poor accused in a criminal case was evolved by an activist judiciary as a basic fundamental right in keeping with Article 14 of the ICCPR, although the Indian Constitution did not include legal aid as a fundamental right. This was the first time that a positive obligation was read into the negative language of Article 21, and Article 21 was construed as imposing a positive obligation on the state to provide legal aid, which was also in consonance with Article 2 of the ICCPR.

The Supreme Court also held in *Khatri's* case (commonly known as the Bhagalpur blinding case),[5] and several other cases, that legal aid must be made available to an accused from the stage of first production before the magistrate and not only when the trial commences, because "jeopardy to [the accused's] personal liberty arises as soon as a person is arrested and produced before a magistrate". It was pointed out by the Supreme Court that it is at the stage of first production that an accused needs competent legal advice, and no procedure would be reasonable, fair and just which denies legal advice and representation to him at that stage.[6] The Supreme Court in that case rejected the plea of financial constraint on the part of the state, saying that the state cannot deprive its citizens of a constitutional right on a plea of poverty. The Supreme Court also held in the same case that there must be an obligation on the magistrate before whom an accused is produced to inform him of his right to free legal aid. It would be a mockery of legal aid if it were left to a poor, ignorant and illiterate accused to ask for free legal services (*vide Suk Das's*[7] case). This was regarded as an essential requirement of fair trial embodied in Article 14(1) of the ICCPR.

Then again, there is no provision in the Indian Constitution prohibiting arrest and detention of a judgment debtor for payment of the judgment debt. In fact Section 51 of the Code of Civil Procedure read with Order 21 Rule 27 permits arrest and detention of a judgment debtor in a civil prison, which would be contrary to the international human rights norm embodied in Article 11 of the ICCPR. How to give effect to this norm in domestic jurisprudence was the question. Again, Article 21 came to the help of the judiciary. The Supreme Court held in *Jolly George's*[8] case that the aforesaid provision in the domestic law was violative of Article 21, since the curtailment of liberty effected by that provision was unreasonable, unfair and unjust, unless the failure to make payment of the judgment debt was despite possession of sufficient means and there was absence of more pressing claims. The Supreme Court thus brought the domestic law in line with Article 11 of the ICCPR by a process of judicial interpretation. The principle of substantive non-arbitrariness was pressed into service.

The Supreme Court was also anxious to protect and safeguard the liberty of the individual in another area, and this was the area of bail. The courts in India were at one time very chary of granting bail and whenever they granted bail, they imposed monetary conditions on the accused, and in addition insisted that the accused must provide sureties who are solvent for the amount of the bail. The result was that many poor persons could not provide monetary bail with sureties and they had to languish in jail for years before the

5 *Khatri and Others v State of Bihar and Others*, [1981] 2 SCR 408.

6 Ibid, at 413B-C.

7 *Suk Das and Another v Union Territory of Arunachal Pradesh*, [1986] 1 SCR 590.

8 *Jolly George Verghese and Another v The Bank of Cochin*, [1980] 2 SCR 913.

commencement of their trial. The Supreme Court therefore held in *Babu Singh's*[9] case and *Hussainara Khatoon's*[10] case that "personal liberty, of which an accused is deprived when bail is refused, is too precious a value of our constitutional system recognized under Article 21", and bail must therefore be the rule and not the exception. This view taken by the Supreme Court was in conformity with Article 14 of the ICCPR.

Also in conformity with international human rights norms, the Supreme Court gave a broad interpretation to the equality clause of the Constitution enacted in Article 14, with a view to enhancing the protection of the liberty and security of the person in *Maneka Gandhi's* case.[11] Until this decision was given, the equality clause contained in Article 14 of the Indian Constitution had been subjected to a narrow, pedantic and lexicographic interpretation under which that Article was equated with the principle that a classification of persons and things would be discriminatory if it is not based on intelligible differentia having rational relation or nexus with the object of the legislation. But the Supreme Court in *Maneka Gandhi's* case freed Article 14 from the imprisonment of this straitjacket formula and pointed out:

> "We must reiterate here what was pointed out by the majority in *E.P. Royappa v State of Tamil Nadu* ([1974] 2 SCR 348; AIR 1974 SC 555) namely, that 'from positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14'. Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be 'right and just and fair' and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied."[12]

Thus, by reference to the equality clause, the meaning and content of Article 21 which guarantees the right to life and liberty was expanded in conformity with the ICCPR.

The right to speedy trial was recognized and enforced in *Kadra Pehadiya's*[13] case where, dealing with the case of four young boys who were detained in jail for a period of three years before trial could commence following committal to the court of sessions, I observed, speaking on behalf of the Supreme Court:

> "Three more years have passed, but they are still rotting in jail, not knowing what is happening in their case. They are perhaps reconciled to their fate living in a small world of their own cribbed, cabined and confined within the

9 *Babu Singh and Others v State of Uttar Pradesh*, [1978] 2 SCR 777; (1978) 1 SCC 579.

10 *Supra*, n 4.

11 *Supra*, n 2.

12 Ibid, at 674B-D.

13 *Kadra Pehadiya and Others v State of Bihar*, [1981] 11 SCJ 302.

> four walls of the prison. The outside world just does not exist for them. The Constitution has no meaning and significance and human rights no relevance for them. It is a crying shame upon our adjudicatory system which keeps men in jail for years on end without trial."[14]

If speedy trial is not available, it affects the liberty of the individual, and hence it was recognized as a fundamental right implicit in Article 21. The human rights norm embodied in Article 14 of the ICCPR was given effect in domestic jurisprudence by a process of judicial interpretation regarding speedy trial as a requirement of a reasonable, fair and just procedure.

The words "personal liberty" in Article 21 also came up for interpretation in several cases in India. What is the exact meaning and significance of personal liberty? The Supreme Court again adopted a broad and liberal approach with a view to expanding the reach and content of the right to personal liberty. It held in *Maneka Gandhi's*[15] case, which marked a watershed in the history of human rights jurisprudence in India, that the expression "personal liberty" is of the widest amplitude and covers a variety of rights which go to constitute the personal liberty of man. Consequently, the right of personal liberty includes the right to travel abroad, and impounding the passport of a person without just cause and without observing the principles of natural justice would constitute a violation of Article 21.

The right of liberty is also protected by several other provisions of the Indian Constitution apart from Article 21. Article 20, in keeping with Article 9(3) of the ICCPR, provides that a person who is arrested must be produced before a judicial officer within 24 hours of the arrest and, as provided in Article 9(2) of the ICCPR, he must be informed of the grounds of arrest at the time of his arrest. The arrest cannot be made except under the authority of and in accordance with the law (*vide* Article 9(1) of the ICCPR). If a person is unlawfully arrested or detained, what is his remedy? Of course, he is entitled to a writ of *habeas corpus.* But can he get compensation? There is no provision in the Indian Constitution giving right of compensation to a victim of unlawful arrest or detention. But Article 12(4) of the ICCPR provides for it. The Supreme Court of India filled this gap. In *Rudul Shah's*[16] case, where the petitioner was released 14 years after he was acquitted, the Supreme Court directed payment of compensation by the state, saying that payment of compensation was the only way in which the violation of Article 21 could be redressed. Similarly the Supreme Court awarded compensation for unlawful detention in *Bhim Singh's*[17] case, and for death on account of police firing in the *PUDR*[18] case. Wrongful handcuffing was the reason for compensation in *Ravikant's*[19] case, and in *Wilavati Behera's*[20] case compensation was awarded to a mother whose child died in police custody. The plea of sovereign immunity by way of defence against the claim for compensation was rejected. Thus, by a process of judicial law-making, Article 12(4) of the ICCPR was incorporated in domestic jurisprudence.

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14 Ibid, at 303.

15 *Supra*, n 2.

16 *Rudul Shah v State of Bihar*, [1983] 3 SCR 508.

17 (1985) 4 SCC 677, at 686.

18 *People's Union for Democratic Rights v State of Bihar and Others*, [1987] 1 SCR 631.

19 (1992) 2 SCC 373.

20 (1993) 2 SCC 746.

The right to life embodied in Article 21 has also been expanded in India so as to comport with Article 6 of the ICCPR as explained by the Human Rights Committee in its General Comment[21] on that article. In *Frances Coralie Mullen's*[22] case, the Supreme Court of India held that the right to life does not mean merely the right to physical or animal existence; it also includes the right to live with basic human dignity which lies at the basis of all human rights, as does also the right to basic necessities of life.

The Supreme Court relied upon what Shakespeare says in *The Merchant of Venice*: "You take my life when you take the means whereby I live". The Supreme Court also took the view that Article 21 does not embody merely a negative obligation against the state, but it also covers positive obligations on the state to protect the right to life. The state cannot, by its inaction, jeopardize the right to life. Article 21 has both its negative and positive aspects, just as does Article 6 of the ICCPR, as was observed by the Human Rights Committee in its General Comment on that provision.[23] That is how the Supreme Court laid down a positive obligation on the state to provide legal aid, speedy trial and bail.

It has also been held in India that the right to life includes the right to a clean and healthy environment, which is one of the rights recognized in Article 12 of the International Covenant on Economic, Social and Cultural Rights. The courts can therefore enforce the right to a clean and healthy environment by virtue of Article 21, even though there may be no specific law made by the state for protection against environmental pollution and ecological degradation. Recently, the right to life has also been interpreted to include the right to health and primary education, which are also rights contained in the International Covenant on Economic, Social and Cultural Rights.

Thus by adopting an activist, creative and goal-oriented approach, the Supreme Court has injected international human rights norms into the provisions of domestic law relating to liberty and security of the person.

Access to justice

Let me now turn to consider how the Supreme Court of India has thrown open the doors of the courts and provided access to justice to large multitudes of people hitherto deprived of it. The Indian experience is, I dare say, of great relevance to the Caribbean countries where the socio-economic conditions of the people are no different.

The judges of the Supreme Court of India found that the main problem which deprived the poor and the disadvantaged of effective access to justice was the traditional rule of standing, which insists that only a person who has suffered a specific legal injury by reason of actual or threatened violation of his legal rights or legally protected interests can bring an action for judicial redress. It is only the holder of the right who can sue for actual or threatened violation of the right, and no other person can file an action to vindicate such a right. This rule of standing was obviously evolved to deal with a right-duty pattern which is

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21 General Comment 6(16) (Article 6), Annual Report of the Human Rights Committee 1982, GAOR 37th session, Supplement No 40 (A/37/40), pp 93-4.

22 *Frances Coralie Mullen v The Administrator, Union Territory of Delhi and Others*, [1981] 2 SCR 516.

23 *Supra*, n 21.

only to be found in private law litigation. It effectively barred the doors of the court, however, to large masses of people who, on account of poverty and ignorance, could not utilize the judicial process. It was felt that even if legal aid offices were established for them, it would be impossible for them to take advantage of the legal aid programme because most of them lack awareness of their constitutional and legal rights, and, even if they were made aware of their rights, many of them would lack the capacity to assert them.

The Supreme Court of India, therefore, decided to depart from the traditional rule of standing and so to broaden access to justice. Where a legal wrong or legal injury is caused to a person or to a determinate class of persons by reason of violation of their constitutional or legal rights, and such person or determinate class of persons is, by reason of poverty, disability, or socially or economically disadvantaged position, unable to approach the court for relief, any member of the public or social action group acting *bona fide* can maintain an application in a high court or the Supreme Court seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons. This is no more than a radical generalization or extension of the technique followed in most countries in *habeas corpus* cases where the court usually acts on letters written by or on behalf of a person who is in illegal custody and is, by reason of incarceration, unable to approach the court for relief.

The Supreme Court of India also felt that when any member of the public or social organization espouses the cause of the poor, he should be able to move the court by just writing a letter, because it would be quite harsh to expect a person acting *pro bono publico* to incur expenses from his own pocket in order to go to a lawyer and prepare a regular petition to be filed in court for enforcement of the fundamental rights of the poor. In such a case, a letter addressed by him to the court can legitimately be regarded as an appropriate proceeding within the meaning of Article 32 of the Constitution. The Supreme Court thus evolved what has come to be known as "epistolary jurisdiction", where the court can be moved by just addressing a letter on behalf of the vulnerable class of persons.

Epistolary jurisdiction was a major breakthrough achieved by the Supreme Court in bringing justice closer to the large masses of people. The court for a long time had remained the preserve of the rich and the well-to-do, and had been used only for the purpose of protecting the rights of the privileged classes. As a result of this innovative use of judicial power, however, the portals of the court were thrown open to the poor, the ignorant and the illiterate, and their cases started coming before the court through public interest litigation.[24] The people became aware that the court has the constitutional power of intervention which can be invoked to combat repression and exploitation and ensure realization of constitutional and legal rights for persons under trial, convicted prisoners, women in protective custody, children in jail, bonded and migrant labourers, unorganized workers, scheduled castes and tribes, landless agricultural farmers who fall prey to faulty mechanization, women who are victims of flesh trade or dowry, slum and pavement dwellers, and the kin of victims of extrajudicial execution. These and many other disadvantaged groups could, by reason of this innovative strategy, have their problems brought before the court through public interest litigation. These were unusual problems

24 Here, "court" refers generally to the Supreme Court of India and the high courts of the different states in India which enjoy jurisdiction to issue high prerogative writs under Article 32 and Article 226 respectively of the Constitution of India.

which called for extraordinary remedies, and they needed a new kind of lawyering skill and a novel kind of judging.

Right from the commencement of public interest litigation, one difficulty became manifest: the total unsuitability of the adversarial procedure to this kind of litigation. The adversarial procedure can operate fairly and produce just results only if the two contesting parties are evenly matched in strength and resources. Quite often, however, that is not the case. Where one of the parties to a litigation is weak and helpless and does not possess adequate social and material resources, he is bound to be at a disadvantage under the adversarial system, not only because of the difficulty in getting competent legal representation, but more than anything else because of the inability to produce relevant evidence before the court. The problem of proof thus presented obvious difficulties in public interest litigation brought to vindicate the rights of the poor.

The Supreme Court, therefore, innovated the strategy of appointing socio-legal commissions of inquiry for the purpose of gathering relevant material bearing on the public interest litigation before the court. The Supreme Court took the view that under the Constitution the Supreme Court not only had the power but also it was under an obligation to enforce fundamental rights enshrined in the Constitution. For the purpose of enabling it to discharge its constitutional obligations, the Supreme Court took the view that it was entitled to pass any ancillary and incidental orders, and accordingly it started appointing socio-legal commissions of inquiry in aid of discharging its constitutional obligation. The report of the socio-legal commission of inquiry would be regarded as *prima facie* evidence by the Court, and copies of it would be supplied to the parties so that either party could dispute the facts or data stated in the report by filing an affidavit. The Court would then consider the report of the commission of inquiry and the affidavits which may be filed, and proceed to adjudicate the issues arising in the writ petition. This practice marked a radical departure from the adversarial system of justice which formed the basis of the common law system.

But even after all these innovations made by the Supreme Court, the question remained as to what relief the court could give to the disadvantaged and vulnerable groups of people whose problems were brought before the court through public interest litigation. The Court had to evolve new remedies for giving relief. The Supreme Court, therefore, explored new remedies which would make basic human rights meaningful for the large masses of people. These remedies were unorthodox and unconventional and were intended to initiate positive action on the part of the state and its authority. The Supreme Court also on various occasions directed the state to pay compensation to those whose rights of liberty and security of the person were violated.

The Supreme Court thus broadened access to justice and brought it within the easy reach of large numbers of people who had for long remained outside the reach of justice. As one eminent jurist observed, the Supreme Court of India became for the first time, the Supreme Court for Indians.