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Speech on:
Democratization of Remedies and Access to Justice

by

Hon'ble Mr. Justice P.N. Bhagwati
Chairman, United Nations Human Rights Committee
(Former Chief Justice of India)

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Today, more than ever before what is vitally important is to secure enforcement of human rights, because there are millions all over the world and particularly in developing countries who are denied the protection of human rights, and unless we evolve remedies for ensuring realization of human rights by them and vigorously pursue such remedies instead of merely talking about human rights from an elitist platform, human rights would remain merely a teasing illusion and a promise of unreality. Our entire approach to the subject of human rights must not be conference or seminar-oriented, but must be action-oriented and goal oriented. It is only if the human rights movement is taken up at the grassroots level by social activists who are dedicated to the cause of the poor, who have a sense of social commitment and who are working amongst the deprived and exploited sections of humanity and sharing their misery and suffering, that the seedling of human rights will sprout forth into a great banyan tree, spreading its roots far and wide and offering its protection and shade to the tried and the exhausted. The spotlight of human rights has to be turned on the deprived and vulnerable sections of the people in the developing countries for whom life is a long never-ending vigil and of whom Gandhi the Father of the Nation said:

"I have had the pain of watching birds, who for want of strength could not be coaxed even into a flutter of their wings. The human bird under the Indian sky gets up weaker than when he pretended to retire. For Millions it is an eternal vigil or an eternal trance".

What is therefore, necessary, is to have a mechanism for enforcement and realization of human rights guaranteed by the constitution of the law.

It is clearly not enough merely to make declarations and pass resolutions about human rights which are essential for full development of the human personality. Human rights must be effectively implemented and they must not be allowed to remain merely pious declarations. We have to fashion new tools and innovate new strategies for the purpose of actualizing the human rights and making them meaningful for the large masses of the people. We have to democratize our remedies for enforcement of these human rights so that they become available to every citizen in the country irrespective of their caste, creed, colour, religion or gender. Today unfortunately the doors of the courts, though theoretically open to one and all, are in reality slammed against the poor, for the poor just cannot afford to approach the courts to enforce their rights. The justice system in all our countries is based on two postulates namely, self-identification of injury and self-selection of remedy. These two postulates are unfortunately lacking in most of the developing countries. The poor and the disadvantaged are not aware of the rights conferred upon them by the international and national instruments nor do they possess the capacity to assert these rights against the government officials or the corporate violators or the powerful sections of the community. They lack awareness of their rights as also the capacity to assert their rights. They also lack the availability of resources for approaching the courts for enforcement of their rights, with

the result that the rights conferred upon them internationally and nationally remain merely paper tigers without teeth and claws. Moreover, the enormous delay and expense of the legal system also effectively bars the poor access to justice. The poor are priced out of the legal system; they are, if I may say this, functional out-laws. They have no choice but to suffer, in anguished silence and in the despair of helplessness and frustration, violations of their rights by powerful sections of the community, ruthless exploiters and even insensate politicians and bureaucracy. They are often victims of governmental and police lawlessness and they are totally without any remedy against this oppression and injustice. Despite the concern expressed by human rights activists even now unfortunately in some parts of the world deprivation and exploitation continue unabated; the basic human rights of the poor are violated: they are denied the basic necessities of life: they do not enjoy the right to education and many of them are still illiterate. The benefits of social welfare laws and governmental schemes and measures do not reach them and these benefits are either siphoned off by intermediaries or are directed into wrong pockets or are confirmed only to the upper crust. Law is often used against the poor for repressive purposes and in some places the machinery of police instead of aiding the vulnerable sections allows itself to be utilized for assisting and perpetuating their exploitation. To the poor and the deprived, the law seems to be meant only for them and not for the rich and affluent and when the law is turned against them as an instrument of repression, they do not know where to go or to whom to turn. They find that the legal and judicial process is far removed from them and they have almost lost faith in its capacity to give them justice. But there is no reason for despair; gradually a revolution is taking place in the legal and judicial process as a result of legal aid and social action litigation, which have become powerful instruments for providing effective access to justice to the poor and the deprived in many developing countries.

It is recognized on all hands that access to justice is one of the most basic human rights and without it, the realization of many other human rights may become difficult. Therefore in response to the demand for access to justice for which millions of people are constantly and continually clamouring with a view to protection against violations of their human rights, the Supreme Court of India opened the doors of the courts open by broadening the doctrine of locus standi or what is known as standing and making it possible for the problems of the poor to be brought before the courts. The Supreme Court of India in the "Judges Appointment and Transfer Case" held that though the ordinary rule of Anglo Saxon Jurisprudence is that an action can be brought only by a person to whom legal injury is caused, this rule can and must be departed from, having regard to the massive poverty and ignorance of the people and where legal injury is caused to a person or class of persons, who by reason of poverty or disability or socially or economically disadvantaged position cannot approach the courts for judicial redress, any member of the public or NGO acting bona fide can maintain an application in the Court seeking judicial redress for the legal injury caused to such person or class of persons and in such a case the courts will not insist on a regular petition to be filed by the public spirited individual or NGO espousing their cause and will readily respond even to a letter addressed by such individual or NGO. This widening of the rule of locus standi, and creation of new epistolary jurisdiction, introduced a new dimension in the judicial process and opened up a new vista of a totally different kind of litigation for the rights of the poor and deprived sections of the community and ensuring basic human dignity to them.

Social Action Litigation:

The courts are now entertaining social action litigation initiated by means of regular petitions or even letters addressed by social activists, lawyers, journalists, law academics and NGOs and using their judicial power or intervention with a view to ameliorating the misery and suffering of the people, arising from poverty, repression, governmental lawlessness and administrative deviance. The people have come to identify the courts as a last resort for the oppressed and the bewildered. The transition from a traditional captive agency with a low social visibility into a liberated agency with a high socio-political visibility is a remarkable development in the career of our appellate judiciary. The courts are now through social action litigation forcing the pace of socio-economic change and compelling the governments and the bureaucrats to perform their constitutional duty of protecting the poor against social and economic injustices and ensuring realization of basic human rights.

There are all sorts of cases coming before the courts presenting problems of the deprived and vulnerable sections of the community; there are cases of under-trial as well as convicted prisoners, women in protective custody, children in juvenile institutions, bonded and migrant workmen, unorganized labour, untouchables and scheduled tribes, landless agricultural labourers who fall prey to faulty mechanization, women who are bought and sold, slum and payment dwellers and victims of extra-judicial executions and many more. The courts are, through judicial creativity, evolving for the poor and the downtrodden new rights which are part of basic human rights but which are today inchoate and struggling to be born and which before their birth are sought to be stifled by the exploiting class. The judiciary has for the first time come out in the service of the weaker sections of Indian humanity. Social action litigation has thus become one of the most powerful instruments for protecting the poor and the weak against violation of their basic human rights by democratizing the remedies and providing access to justice to these unfortunate human beings.

In the beginning when I started social action litigation in India as a judge in the Supreme Court of India there was criticism from some quarters that entertaining social action litigation and making orders and giving directions for taking affirmative action to make human rights meaningful and effective was going far beyond the traditional judicial function. Some critics said that the function of a judge is merely to administer the law as he finds it and it is not for him to make the law; his function is *jus dicere* and not *jus dare*; he must look upon peoples' causes merely as issues argued arcanelly by lawyers and decided in the mystery and mystic of the inherited Anglo Saxon judicial process. They criticized that in entertaining social action litigation and making orders of securing basic human rights to the poor and the helpless, the judiciary is placing itself above the law and is transgressing its limitations. This criticism was repelled by me as unfounded because the law cannot remain static; it has to adapt itself to the needs of the people and to satisfy their hopes and aspirations. The law is not an antique to be taken down, dusted, admired and put back on the shelf. It is a dynamic instrument fashioned by society for the purpose of eliminating friction and conflict and unless it secures social justice to the people, it will fail in its purpose and some day people will cast it off. It is therefore the duty of the judges to mould and develop the law in the right direction by creatively interpreting it so that it fulfils its social purpose and economic mission. The judges must realize that the law administered by them must become a powerful instrument for ensuring social justice to all and by social justice, I mean justice which is not limited to a fortunate few but which encompasses large sections of have-nots and

handicapped, law which brings about equitable distribution of the social material and political resources of the community. What we need is law which is dynamic and not static, law which draws its sustenance from the past but looks out into the future, law which is ready to march forward in the service of humanity; we would do well to remember the famous words of Justice Cardozo:

"The inn that shelters for the right is not the journey's end. Law like the traveller, must be ready for the morrow".