

DEVELOPING HUMAN RIGHTS JURISPRUDENCE : THE DOMESTIC APPLICATION OF INTERNATIONAL HUMAN RIGHTS NORMS (1988). Human Rights Unit, Commonwealth Secretariat, Marlborough House, Pall Mall, London (UK). Price £ 10.

THE PRESENT day concept of human rights is essentially the product of the post-Second World War era. It is at the centre of the development of modern world, especially the Third World where there has got to be a remarkable link between human rights and development. The institutionalization and expression of the concept through numerous regional and global instruments is, theoretically speaking, a concrete step to revolutionize individual and collective human life the world over.¹ For the human rights are the rights that everyone equally has by virtue of "their very humanity" and also by virtue of their being grounded in an appeal to "our human nature."²

Rhetoric apart, the real question is how the internationally recognized standards, that is human rights, should be met by domestic practice. One way of doing it is through the intervention of the legal profession and judiciary which, if in tune with their ideologies, can develop and apply them within domestic jurisdictions. The book³ under review is an exemplary initiative in this direction.⁴ This is just not an appeal for domestic application of the human rights norms but also reflects the process of their actual application in several common law countries. This is evident from the deliberations of the Bangalore Judicial Colloquium (1988) published by the Human Rights Unit of the Commonwealth Secretariat (London).⁵

The work consists of a preface written on behalf of the Commonwealth Secretariat, an introduction by the Commonwealth Secretary-General, a declaration titled as "The Bangalore Principles" which is the chairman's concluding statement, a list of participants (mostly judges), agenda of the colloquium, opening ceremony address, inaugural address by the former Chief Justice of India, P.N. Bhagwati J. who was also the convenor of the colloquium, five resource papers written by judges and 11 annexes comprising regional and international human rights instruments, a list of instruments in chronological order, selected case-law summaries, a selected

1. See, Dominic McGoldrick, *The Human Rights Committee: Its Role in the Development of the International Covenant on Civil and Political Rights* 1 and 3 (1991); Eugene Kamenka and Alice Erb-Soon Tay (eds.), "Introduction", *Human Rights* vii (1978); George W. Shepherd, Jr., and Ved P. Nanda (eds.), *Human Rights and Third World Development* 3 (1985).

2. R.J. Vincent, *Human Rights and International Relations* 13 (1986).

3. *Developing Human Rights Jurisprudence: The Domestic Application of International Human Rights Norms* (1988).

4. See also, "Introduction by the Commonwealth Secretary-General," *id.* at viii.

5. *Supra* note 3.

bibliography on the main human rights instruments and a background paper on the work of the Human Rights Unit of the Commonwealth Secretariat. The papers covered the following themes: international human rights norms; freedom of expression: relevant international principles; fundamental rights in their economic, social and cultural context; the role of the judge in advancing human rights by reference to human rights norms; and the domestic application of international human rights norms.

The discussion at the colloquium focussed on recent developments in the area of common law whereby the bar and the bench have generally begun to draw on international human rights jurisprudence with a view to augmenting the domestic law both within and beyond the commonwealth family of nations.⁶ As a result of comprehensive deliberations, the chairman of the meeting summed up the proceedings in a public statement known as "The Bangalore Principles." The principles are as follows:

1. Fundamental human rights and freedoms are inherent in all human-kind and find expression in constitutions and legal systems throughout the world and in the international human rights instruments.
2. These...instruments provide important guidance in cases concerning fundamental human rights and freedoms.
3. There is an impressive body of jurisprudence, both international and national, concerning the interpretation of particular human rights and freedoms and their application. This body of jurisprudence is of practical relevance and value to judges and lawyers generally.
4. In most countries whose legal systems are based upon the common law, international conventions are not directly enforceable in national courts unless their provisions have been incorporated by legislation into domestic law. However, there is a growing tendency for national courts to have regard to these international norms for the purpose of deciding cases where the domestic law—whether constitutional, statute or common law—is uncertain or incomplete.
5. This tendency is entirely welcome because it respects the universality of fundamental human rights and freedoms and the vital role of an independent judiciary in reconciling the competing claims of individuals and groups of persons with the general interests of the community.
6. While it is desirable for the norms contained in the international... instruments to be still more widely recognised and applied by national courts, this process must take fully into account local laws, traditions, circumstances and needs.
7. It is within the proper nature of the judicial process and well-estab-

6. "Preface", *supra* note 3, p. v.

lished judicial functions for national courts to have regard to international obligations which a country undertakes—whether or not they have been incorporated into domestic law—for the purpose of removing ambiguity or uncertainty from national constitutions, legislation or common law.

8. However, where national law is clear and inconsistent with the international obligations of the state concerned, in common law countries the national court is obliged to give effect to national law. In such cases the court should draw such inconsistency to the attention of the appropriate authorities, since the supremacy of national law in no way mitigates a breach of an international legal obligation which is undertaken by a country.
9. It is essential to redress a situation where, by reason of traditional legal training which has tended to ignore the international dimension, judges and practising lawyers are often unaware of the remarkable and comprehensive developments of statements of international human rights norms. For the practical implementation of these views it is desirable to make provision for appropriate courses in universities and colleges, and for lawyers and law enforcement officials; provision in libraries of relevant materials; promotion of expert advisory bodies knowledgeable about developments in this field; better dissemination of information to judges, lawyers and law enforcement officials; and meetings for exchanges of relevant information and experience.
10. These views are expressed in recognition of the fact that judges and lawyers have a special contribution to make in the administration of justice in fostering universal respect for fundamental human rights and freedoms.⁷

On the domestic application of the international jurisprudence of human rights, these principles contain useful information, provide guidelines especially to judges and lawyers and suggest the introduction of courses in law schools and for lawyers *etc.*, a provision for relevant material in libraries, establishment of expert bodies, dissemination of information to all concerned and meetings for exchange of views and experience. The Bangalore declaration has been restated for the sake of wide publicity in national interest so that it is taken note of by law teachers, students, lawyers, judges and others interested in the theme.

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7. *Id.* at ix-x.

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