

**Agenda Item 84**  
**The Rule of Law at the National & International Level**  
06 October 2016

**INDIA STATEMENT**

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Sixth Committee of the 71<sup>st</sup> Session of the UNGA

**Thank you, Mr. Chairman,**

We associate ourselves in general with the statement made by the distinguished delegate of the Islamic Republic of Iran on behalf of Non-Aligned Movement and make the following observations in our national capacity.

Mr. Chairman

The item "The Rule of Law at the National and International Levels" has been on the agenda of this Committee since sixty-first session of the General Assembly in 2006. The principal objective for inclusion of this item on the agenda is to focus the attention of the United Nations to the observance of rule of law at all levels.

We recall that the General Assembly Resolution A/70/118 of 14<sup>th</sup> December 2015 invited the Member States to focus their comments at this session on the sub-topics "Sharing national practices of States in the implementation of multilateral treaties" and "Practical measures to facilitate access to justice for all, including for the poorest and most vulnerable"

We thank the UN Secretary-General for his report A/71/169 entitled "Strengthening and coordinating United Nations rule of law activities". The report highlights the UN rule of law activities and developments at the national and international levels with a focus on the role of multilateral treaty processes in the promotion of rule of law. It provides an overview of activities undertaken by the UN and its various agencies during last year in support of rule of law activities and implementation of programmes in developing countries, especially in LDCs and conflict areas; these were aimed at capacity building of the government bodies, law enforcement agencies, judicial/quasi-judicial bodies as well as other bodies and groups of people to improve and enhance access to justice, especially to the poor and vulnerable sections of the society in those countries.

It may be noted that there is no agreed definition of the term "rule of law". However, underlying principle of Rule of Law at the international level is observance of sovereign equality, non-interference, etc., and at national level the executive action must have legal authority to support. We would like to state that mere codification or enactment of a law at international or domestic level is not sufficient to promote the cause of the rule of law. Rule of law must not be confused with rule by the letter of law. Every law codified or enacted must stand the test of fundamental human values, the principles of equality in treatment, participation and representation. All enactments and legal instruments should be open to

review to adapt to new developments. Otherwise rule of law may become an instrument of oppression and give legitimacy to the enacting of laws grossly violative of basic human rights as has been witnessed in history.

At the outset, we may state that India is law abiding nation in our international relations or in the domestic sphere. India is party to the Permanent Court of Arbitration. We have accepted the compulsory jurisdiction of the International Court of Justice under Article 36 (2) of the Statute of the ICJ.

Mr. Chairman,

With regard to the first sub-topic on the *implementation of multilateral treaties*, we share our national practice as follows:

After independence in 1947, India had adopted the Constitution, which is the supreme law of the land. It established a parliamentary democracy with strong judiciary, which is independent and separate from the executive or legislature. It lays down a federal structure with unitary features.

The Union, i.e., federal, Government at the centre has the treaty making and also implementing power.

Article 246 of the Constitution confers exclusive power on the Parliament to enact laws in the matter of "entering into treaties and agreements with foreign countries" and participation in the UN, international conferences, associations and other bodies and implementing of decisions made thereat. (items 12-14 of the Union List, i.e., List I of the Seventh Schedule).

The Parliament has not so far enacted any law on treaty making power. In the absence of a law, the federal executive, whose power is co-extensive and co-terminus with that of the Parliament (under Article 73), exercises treaty powers under the Constitution.

The executive does not consult nor seek prior approval of the Parliament to conclude a treaty. However, if a treaty envisages change of the existing law or affects the rights of individuals, the executive has to approach the Parliament for enactment of law to implement such treaty.

As noted above, while the Union has exclusive power to deal with the subjects in the Union list (i.e., List-I), the States or provinces have the legislative and administrative power over the subjects/items in the State list (i.e., List-II). If the Union Government enters into a treaty dealing with the subject matter falling under the State List, it has to go to the Parliament for an implementing legislation to give effect to that treaty. Such implementing law would be applicable throughout country overriding the State/ provincial powers.

Thus treaties in India *per se* are not self-executing; they require the Parliament action, if their implementation affects the existing law or the rights of individuals or the distribution of powers between the Union and the States.

It may be noted that India is a party to several multilateral treaties/conventions; it is party to all important conventions or treaties adopted by the UN, including human rights conventions; conventions on terrorism, the UNCLOS, etc. For example, our Parliament enacted the United Nations (Privileges and Immunities) Act, 1947, to give effect to the Convention on the Privileges and Immunities of the United Nations, 1946. The Geneva Conventions Act, 1960, was enacted to give effect to the four Geneva Conventions of August 12, 1949 for the Protection of War Victims. The Diplomatic Relations (Vienna Convention) Act, 1972, was enacted to give effect to the Vienna Convention on Diplomatic Relations, 1961.

The Parliament also enacted laws to give effect to various conventions on narcotic drugs or anti-terrorism, which require specific acts to be included as criminal offences in our domestic law. The Tokyo Convention Act, 1975, was enacted to give effect to the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963. The Anti-Apartheid (United Nations Convention) Act, 1981, was enacted to give effect to the International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973. The Anti-Hijacking Act, 1982, was enacted to give effect to the Convention for the Suppression of Unlawful Seizure of Aircraft, 1970. The Suppression of Unlawful Acts Against Safety of Civil Aviation Act, 1982, was adopted to give effect to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971.

**Mr. Chairman,**

We firmly believe that ensuring access by member States to the mechanisms of the peaceful settlement of international disputes is a key element in promoting rule of law at the international level.

One of the objectives of the Constitution (Preamble) is "to secure to all its citizens Justice social, economic and political".

Part III of the Constitution guarantees fundamental rights and freedoms to all citizens. These rights include the right to life and liberty, equality before law and equal protection of law, right against arbitrary detention, freedoms of speech, association, religious freedom, etc. Another most important right is the right to remedy in case of violation of any of these fundamental rights or freedoms. Article 32 of the Constitution guarantees the right to approach the Supreme Court of India for violation any of the fundamental rights. This right to remedy itself is a fundamental right. Further, Article 226 of the Constitution guarantees access to the High Courts in each State for remedies against violation of any legal rights of individuals.

Further, the Indian Constitution guarantees everyone the right to have any dispute decided in a fair public hearing before an independent court or tribunal or any other independent and impartial forum. In order to secure access to justice on the basis of equal opportunity, Article 39A of the Constitution directs the State to provide free legal aid to the poor and disadvantaged people. Pursuant to this directive, the Indian Parliament enacted the Legal Services Authorities Act in 1987 and established the NLSA (National Legal Services

Authority) to provide free legal advice and other legal services to the people with social and economic backwardness, women, children, mentally challenged, victims of trafficking, or of mass disasters or natural calamities.

Mr. Chairman,

The Indian judiciary has, through its pronouncements and judicial activism in a number of cases, upheld the essence of the Constitutional provisions on ensuring equal access to justice for all. The Supreme Court and the High Courts pronounced in number of cases that there could be no derogation from fundamental rights conferred by the Constitution, especially the right to life and liberty, right to equality and right against discrimination. In a recent case about transfer of certain civil and criminal cases from one area to another, the Supreme Court affirmed that the access to justice is a fundamental right under Article 21 (right to life and liberty). In its decision of 19<sup>th</sup> July 2016, the 5-judge Constitution Bench of the Court observed that "life" implies not only life in the physical sense but a bundle of rights that makes life worth living; access to justice is indeed a facet of right to life guaranteed under Article 21 of the Constitution. Then it went on to lay down four essential requirements that constitute the essence of access to justice. They are: (i) The need to provide for an adjudicatory mechanism for the citizens to approach against breach of their rights by the State, and such mechanism should be effective, just, fair and objective in its approach; (ii) The mechanism must be conveniently accessible in terms of distance; (iii) The process of adjudication must be speedy; the court in this connection reiterated its earlier decision in *Sheela Barse's* case that the speedy trial as a facet of right to life; and (iv) The process of adjudication must be affordable to the disputants. It observed that Article 39-A of the Constitution promotes a laudable objective of providing legal aid to needy litigants and obliges the State to make access to justice affordable for the less fortunate sections of the society.

Mr. Chairman,

Moreover, it may be noted that the Supreme Court of India has taken pro-active measures to promote access to justice; it relaxed the traditional rules of *locus standi* and procedural rules by treating a piece of information or even a letter received from any individual or body acting *pro bono publico*, as a formal petition to initiate legal proceedings for realization of fundamental rights. In appropriate cases the Court appointed commissioners or expert bodies to undertake fact-finding investigations. The mechanism of PIL (Public Interest Litigation) now serves a much broader function of access to justice.

Further, the Law Minister of India last week announced digitisation of 622 district level NLSA centres across the country to make them more efficient and effective in helping the poor and needy and he recommended framing of a scheme to give priority to the cases of victims of acid attacks, who are mostly women and girl-children.

Mr. Chairman,

Finally, we take this opportunity to call upon the international community to ensure observance of rule of law at the international level. One of the pressing need of the time is to make the Security Council more representative by enhancing its membership, both, in

permanent and non permanent categories. Developing countries need to be given real voice and participation in global decision making. The global institutions must be fully reflective of contemporary realities and the rule of law norms to enable them to address the global challenges effectively.