

Role of Law in Development

**Workshop Report
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Jamia Hamdard
New Delhi**

Organised Jointly by

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Preface

Law is difficult to ignore when working towards social justice. Its competing qualities make it a contentious site for engagement. On the one hand, the political economy of law supports the socio economic privileges of class, caste and gender; on the other hand, law sets normative universal standards of non-discrimination, equality, and dignity as an alternative to the hierarchical, unequal social order. It is this positive quality that compels engagement with the law; as does the need to transform the substance, structures and practice of law to make it responsive and accessible to the disadvantaged and the poor.

It is to share, learn from and record the different field based initiatives in law that this workshop was jointly organised by Astha Sansthan, Udaipur and Partners for Law in Development [PLD], New Delhi. Astha, has worked for several years on issues of environment, tribal rights, and displacement - all of which have a legal dimension that they have had to engage with from time to time. PLD in contrast is relatively young organisation that aims to integrate law into development and social action. Both PLD and Astha have worked collaboratively on PLD's 'partnership project', which facilitates the attachment of a lawyer [or legal resource] to a NGO to help integrate law in the issue/s of concern to the NGO. PLD is committed to building, strengthening and promoting a culture of collaborative lawyering that treats law as a component of social action rather than an autonomous expertise. It perceives a role for law only in relation to supporting socio political movements and processes that resist discrimination, disadvantage and injustice. Towards this end, PLD seeks to explore innovative, non-formal and contextually relevant ways of using law:- to build a culture of human rights; to set popular normative standards based on equality, dignity and non discrimination; to influence alternative mediation systems within the community; and promote integration of law as a component in development action.

Given the common interest of both Astha and PLD, this workshop was jointly organised. PLD's project partners were invited to build a cross-sectoral community of lawyers and social workers committed to working together for social justice. PLD is extremely grateful to both Astha and Sida for their collaboration and support. Their solidarity to PLD's objectives was the basis for this workshop, and helped provide PLD and its project partners a valuable opportunity to come together, share, learn and grow from each other's experiences.

This report documents the proceedings and discussions of the workshop. It is hoped that the report serves as a resource not just for PLD, but all those engaged in re-visioning and re-constructing a new role for law: one that is relevant and responsive to addressing contexts of poverty, disadvantage and discrimination.

Madhu Mehra

[Executive Director, PLD]

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Introductory Session

Part A : Welcome and Introductions

For PLD this was the first workshop that brought together its NGO and lawyer partners to discuss experiences and learnings in relation to the Partnership Project. Madhu Mehra opened the workshop by welcoming all the participants and resource persons. She thanked them for working with PLD towards the common vision of integrating law in development through the Partnership Projects. She hoped that the workshop would continue the process of learning from each other through dialogue, sharing and interaction. Special acknowledgement was made of Astha Sansthan, Udaipur and Sida for supporting and enabling the present workshop.

Sida was invited to join in the welcome address. Owe Anderson, Counsellor, Development Cooperation, affirmed Sida's interest in the objectives of PLD. He congratulated all the lawyers and the NGO field partners for engaging in social activism at the grassroots level and wished the participants all success. He was glad Sida could enable a sharing of the experiences of PLD's project partners and hoped the workshop discussions would enrich their work.

Rita Sarin of Sida noted the need for forums that enable structured collaboration between lawyers and NGOs, for working towards social justice and appreciated PLD's initiative in this context. She noted the significance of bringing together the outgoing and the present batch of partners, to learn about their experiences in bridging the gap between law and development. She welcomed the entry of Colin Gonsalves on the Advisory Board and commended PLD for having worked in challenging circumstances.

Thereafter, the participants introduced themselves, also mentioning their work in relation with the Partnership Project, which connected them to PLD. As this was the first workshop that brought together the lawyers and the NGO partners of PLD, the participants were happy to be formally introduced to each other and get acquainted with the range of work being done.

Part B : Orientation to PLD

This session covered discussions on the theory and practice of law in development. Madhu briefly outlined the formation of PLD and invited the resource persons: Ravindran, to introduce the theoretical underpinnings of PLD and Shomona, to share a personal account of her transition from a mainstream lawyer to a legal resource, ie a partner in development.

PLD emerged out of a search for locating a meaningful role of law within development. Studies on the use of law by the NGO community helped identify gaps, needs and ideas for collaboration - some inspired from successful regional experiments notably from Bangladesh and Philippines. The Partnership Project began as an experiment to concretise these findings, eventually leading to a vision and role for PLD.

Ravindran linked PLD's role to the larger debates on the political economy of law and its role in development. He began by tracing the debates on role of law from the postcolonial position on "Law and Development" to the subsequent critique and emergence of "Law in Development".

As part of the post colonial wave, law was seen as the vehicle of reform and modernization; the lawyers and the legal system as central to the vision of modernization and social change. Those left out of the development process were meant to be assimilated into the mainstream through legal enactments. When experience and time indicated that this was not happening, this interpretation of law began to be critiqued. Questions were also raised about such a model of development, which ignored the aspirations of the vast underclass: comprising of women, lower castes, and the poor.

The questions being asked were – what then is the role of law and of lawyers, if any, in development? Do they have a role to play at all? A process of deconstruction of law and the legal system ensued, and the problems with legal language, its content and structure were unpacked.

The "law in development" debate helped critique the modernization model itself, and examine how law contributed to the marginalisation of the disadvantaged groups. Studies of different contexts highlighted how the political economy of law itself promoted a problematic model of development. The political emergencies in South America in the 1970's was a time when post-colonial structures broke down with the coming of martial law regimes. This ushered in a crisis in the thinking on law - issues of civil liberties and human rights got included in the "role of law" debate. It became clear that the formal system of law was not equipped to deal with these questions. In response, new forms of legal practice and delivery of legal services emerged. One part of this new form of

lawyering was public interest litigation, as was the emergence and promotion of rights debates around issues of social, economic and collective rights.

The debate around “law in development” seeks to introduce a role for lawyers and legal aid in development, as part of a search for a meaningful role for lawyers and law, which integrates human rights concerns. By bringing a human rights perspective into development work, lawyers have tried to transform the use of law.

Thereafter Shomona, a PLD partner described her struggle and transformation from a legal expert to a legal resource and partner in development. As a student activist with the People’s Union for Democratic Rights, she continuously came up against her inadequate knowledge of law in dealings with the state and the police. This drove her to train in law, and undergo many years of formal practice as a mainstream lawyer, to develop professional skills. In the course of her work she searched for ways of articulating human rights violations within the existing legal framework but often found it inadequate. PLD culminated her personal search for an identity, a search for – who am I? - a lawyer or an activist?

As a PLD partner, she was attached with Navrachna, a forum of organisations working on natural resource management in Himachal Pradesh. This was a humbling experience, of unlearning the skills and posturing acquired while dealing with clients in mainstream practice. She learnt instead about grassroots movements, action, people’s struggles and advocacy methods, and to critique, use and design law creatively into all these spheres. She learnt about how these movements view the law and its relevance to them, and searched for spaces within for a lawyer and a role of law to support their struggles. This involved a lot of trial and error, replacing professionalism with humility and expertise with questioning and re-visioning a role for law. She juggled administrative responsibilities alongside being the lawyer during workshops organised for grassroots women on NRM issues. She took the multiple roles in her stride using this opportunity to listen to the stories of women from the villages engaging with the state and the law at various levels. The experience paved the way for breaking into work very different from a litigation oriented legal practice, - challenging her to strike a balance between an alternative role without losing sight of herself as a lawyer. PLD helped define and affirm that role. Today when asked – “who are you?” she can with pleasure and certainty describe herself as an alternative lawyer.

Colin Gonsalves, a lawyer active with the Human Rights Law Network, spoke with immense feeling about the necessity for lawyers, especially young lawyers whose professional skills are as yet unshaped, to go out into the field and learn from the people. The attitudes of the legal professionals to social issues are fast changing in a world guided by materialism. Urging young lawyers to take the lead in changing this trend, he advised them to observe two rules: First, to listen very carefully and humbly to the people, and second, to join a movement - be it the women’s movement, the labour movement, or the movement for slum rehabilitation. Becoming loyal to the movement was important, no matter what one learnt as a law student about being detached from one’s client and case.

Manna Ram Dangi, a lawyer from Udaipur and a PLD partner, spoke about the need for accountability and transparency, for lawyers as much as the judicial system. Lawyers should be accountable to the people when they approach the courts for relief, since litigation filed in a non-consultative manner can be extremely damaging to the interests of the people. Defective laws exist and continue to be enacted because of lack of contact with the ground realities. There should be increased involvement of the people in formulation of laws so that their aspirations are properly represented.

Madhu concluded the session observing how the discussions in this session resonated the rationale for PLD - and that PLD could transform individual searches into a structured option of alternative law practice that reaches out, strengthens and empowers process of development and social change.