

NEGOTIATING GENDER JUSTICE, CONTESTING DISCRIMINATION

MAPPING STRATEGIES THAT INTERSECT CULTURE, WOMEN
AND HUMAN RIGHTS



PARTNERS FOR LAW IN DEVELOPMENT

Partners for Law in Development (PLD) - is a legal resource group working in the fields of social justice and women's rights in India. Founded in 1998, the organization locates women's rights as integral to its work on social justice, engaging with it in contexts of family, sexuality, culture, caste, conflict and development. We believe that social justice goals are best shaped by human rights and the Constitutional guarantees that establish the framework for realization of the rights of the marginalized and the disadvantaged. We promote and facilitate application of rights through capacity and perspective development programmes, production of knowledge resources, and advocacy.

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As this report is largely based on discussions and field observations, some errors are very likely. We apologise in advance for the mistakes in the reporting of events, details, and would welcome corrections and feedback from the readers. Another inevitable outcome of a report based on discussions is the likelihood of perspectives and understandings differing from those of the authors of the work in the field, or the communities they work with. The perspectives of this report are PLD's alone, and may sometimes not correspond with the self description of the respondents/source of information. These variations in understandings are part of the diversity of our positions, and a reflection of the partial nature of this inquiry, that makes this documentation merely a work-in-progress.

Madhu Mehra
Executive Director

Abbreviations

ADR: Alternative Dispute Resolution
ANBTI: Aliansi Nasional Bhinneka Tunggal Ika, Indonesia
APWWS: Arunachal Pradesh Women's Welfare Society
ASHA: Association for Social and Human Awareness, Ranchi
ASK: Ain O Shalish Kendra, Bangladesh
BMMA: Bharatiya Muslim Mahila Andolan, India
BRAC: Bangladesh Rural Advancement Committee
CA: Constituent Assembly
CBO: Community Based Organisation
CEDAW: Convention on the Elimination of All Forms of Discrimination against Women, 1979
CPN (M): Communist Party of Nepal (Maoist)
CSDS: Centre for the Study of Developing Societies, New Delhi
CSS: Chotanagpur Sanskritik Sangh, Ranchi
CWDS: Centre for Women's Development Studies, New Delhi
DC: District Collector
FWLD: Forum for Women, Law and Development, Nepal
HRLS: Human Rights and Legal Aid Services, Bangladesh
KP: Komnas Perempuan, Indonesia
LACC: Legal Aid and Consultancy Centre
LBH APIK: Lembaga Bantuan Hukum Asosiasi Perempuan Indonesia
MAP: Manavadhikar Aiyathi Porishad, Bangladesh
MNS: Manavadhikar Nari Samaj, Bangladesh
MWRN: Muslim Women's Rights Network, India
MSP: Manav Adhikar Sangrashan Porishad, Bangladesh
NEFA: North East Frontier Agency
NGO: Non Government Organisation
NU: Nahdlatul Ulama, Indonesia
OBC: Other Backward Class
PBB: The Crescent Star Party, Indonesia
PKS: The Prosperous Justice Party, Indonesia
PPP: The United Development Party, Indonesia

PLD: Partners for Law in Development, New Delhi
POTA: Prevention of Terrorist Activities Act 2002
PRIP: Private Rural Initiatives Program, Bangladesh
PW: People's War
PWDVA: Protection of Women from Domestic Violence Act 2005
RIB: Research Initiative Bangladesh
SARA: Social Association for Rural Advancement, Bangladesh
SC: Scheduled Caste
SHG: Self Help Group
ST: Scheduled Tribe
UCC: Uniform Civil Code
WHR: Women for Human Rights, Nepal
WOREC: Women's Rehabilitation Centre, Nepal

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Introduction

The last decade has witnessed the adoption of new strategies by women's groups that expand the equality agenda into the domain of culture. Many of these initiatives are not limited to secular constitutional challenges, but consciously draw upon cultural identities, symbols and sometimes religion/cultural terminology to contest socio-economic inequalities in the cultural domain. These engagements seek to primarily voice concerns of constituencies that have been marginalised and suppressed, in particular women. To understand how these strategies, both secular and religious, relate to human rights, Partners for Law in Development (PLD) undertook field work in four countries in South/South East Asia. This report documents initiatives that engage with culture, including those that draw upon religion, to examine how these relate to and advance human rights. This documentation assumes greater importance in light of the creation of the new mandate of the Independent Expert in the field of Cultural Rights in 2009 within the UN human rights system, which is in the process of defining the scope of cultural rights. In light of the competing ways in which culture is used, it is important to distinguish the emerging engagements that advance women's rights from cultural discourses that invoke relativist or essentialist arguments and limit women's equality agenda. Also there is a need to assess the relevance of the latter to debates on and issues of human rights.

There is no fixed definition of what 'culture' is, but for the purposes of this report we refer to the General Comment 21 to the International Covenant on Economic, Social, and Cultural Rights which observes that 'In the Committee's view, culture is a broad, inclusive concept encompassing all manifestations of human existence. The expression 'cultural life' is an explicit reference to culture as a living process, historical, dynamic and evolving, with a past, a present and a future.'¹ The Special Rapporteur on Violence Against Women, in her report on intersections between culture and violence against women notes that 'Culture can be defined as the set of shared spiritual, material, intellectual and emotional features of human experience

1 Committee on Economic, Social and Cultural Rights, General Comment 21, E/C.12/GC/21 (21st December 2009)

that is created and constructed within social praxis.² In terms of the understanding derived from our field work, culture in diverse contexts appeared to be a composite of various influences, in which religion, ethnicity, and political environment, economic conditions, livelihoods, social, and geographic influences all play a role.

The field work was carried out in four countries - Bangladesh, India, Indonesia and Nepal to gain a comparative understanding of diverse strategies. The strategies are presented country-wise in light of the political, demographic, and economic contexts, to demonstrate the extent to which the external context determines the availability and relevance of different strategies. For instance, the emergence of interventions and approaches that draw upon cultural and religious resources owe their origin to the increasing influence of fundamentalism, cultural and identity politics in governance and political agendas. These strategies operate at various levels – not only do they contest specific areas of discrimination, but more importantly, contest the knowledge and authority of the religious/cultural orthodoxy over the cultural domain. The country reports do not follow a uniform structure but they all set out the external political context before proceeding to specific strategies and areas of concern. The discussion on strategies tends to cluster together distinct types of interventions, integrating the issues these interventions address. The country reports conclude with observations on broad themes, findings and challenges particular to the country context.

The reports bring out the gender justice and gender equality concerns for each country – highlighting the debates and the approaches undertaken to negotiate women's rights, at the community and policy levels and contextualizes it within the external political scenario. The Bangladesh report discusses two broad strategies related to family law and women – those that involve alternative community interventions modeled on the 'shalish' or traditional mediation bodies of local elite, and those that engage with the formal law. The Indonesia report clusters the interventions that use Islam as a resource for social transformation and gender justice under two broad categories: those that are initiated by religious organisations and those that are initiated by secular/non-religious organisations. The report on Nepal locates the predominant reliance upon legislative reform and judicial review for correcting

2 Report of the Special Rapporteur on violence against women, its causes and consequences 'Intersections between Culture and Violence against Women' A/HRC/4/34 (17th January 2007)

gender discrimination in the context of nation building as a new secular democratic republic. India is not presented as a country report – but two contexts are covered through three reports that examine women’s issues in minority and marginalised communities. The chapter on Muslim women’s networks foregrounds the use of the Muslim identity by activists to engage with the community, including on family law. It covers three networks from the women’s movements in India to bring out the diverse political origins and contexts within which these networks emerged, and bring out their distinctness and commonalities. All three locate women’s rights within a larger social justice goal for the Muslim community. The second context covered is that of tribal (indigenous) women in Arunachal Pradesh in the north east of India, and Jharkhand, in central-east. Both these states have a tribal majority and autonomy with respect to operation of tribal customary law, and the common obstacles in both contexts relate to women’s title to land. The concluding chapter draws common themes from all the country reports to develop a gendered understanding of cultural rights and cultural diversity.

The country reports are based on conversations, interviews conducted during field visits, and on presentations made at conferences and workshops attended on relevant themes. The field work was conducted between September 2008 and May 2010, and were 4 to 10 days each for the countries covered outside of India. While the organisations and individuals we met gave us rich accounts of their work and the context, the number of interviews to be covered and the overall brevity of the field visits did limit a full understanding.³ The limitations of time and resources did not permit covering all initiatives in the country or indeed all the organisations that have contributed to this sector of work. Even though some secondary sources of information and NGO documentation have supported the findings, this report is partial, and must be viewed as work in progress. Nonetheless, despite limitations, the report tries to do justice to the area of work covered and in some cases, has benefitted from feedback of the persons interviewed. It is very likely that the perspectives and accounts documented in the country reports do not correspond with that of the organisation or activist interviewed. Given that this documentation is part of a longer engagement with the theme, feedback, corrections, updating of information are actively sought and welcomed.

3 The details of field visits on the basis of which this report is developed, and the list of persons interviewed, workshops/ conferences attended are provided in the Appendix